

S. HRG. 112-907

# BEYOND MOTHER'S DAY: HELPING THE MIDDLE CLASS BALANCE WORK AND FAMILY

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## HEARING OF THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

EXAMINING HELPING THE MIDDLE CLASS BALANCE WORK AND  
FAMILY

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MAY 10, 2012

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## **BEYOND MOTHER'S DAY: HELPING THE MIDDLE CLASS BALANCE WORK AND FAMILY**

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**THURSDAY, MAY 10, 2012**

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:03 a.m. in room SD-430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Merkley, Franken, Whitehouse, Blumenthal, and Enzi.

### **OPENING STATEMENT OF SENATOR HARKIN**

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

This Sunday is Mother's Day, and while it is a good time for cards and flowers, it is also a good time for us to take a look at how America's moms—and dads, too—are faring as they try to balance the often competing demands of jobs and families.

This committee has held a series of hearings over the last year to look at challenges facing the American middle class. The challenges of working families have been a big part of this discussion. What we have learned is that the middle class is struggling. The American Dream is slipping away for millions of people.

As my constituent, Amanda Greubel, testified so eloquently last year, her family did everything they were told to do in order to achieve the American Dream. And she said,

“All we have ever wanted is security and a little comfort. To know that our bills are paid, our needs are met, and we can have a real getaway every now and then. That our children can pursue higher education without the burden of student loan debt, and that someday we can retire and enjoy our final years together in the way we choose.”

That was Amanda's statement.

But Amanda and so many others are struggling mightily. I would point out that both she and her husband worked, and when I met her, she and her husband were wondering how they would be able to support the coming of their second child, which she has since had.

A secure family is a very important piece of the American Dream for our middle class. It means more than just financial security. It means having a good family life and being able to spend time together. It means being able to care for your children, and your par-

ents when they need you, and to know that they are well taken care of when you cannot be with them.

Yet, one of the biggest stresses facing families today is the conflicts they experience in caring for their family while also working. Today, most parents of young children work because even a modest middle class life today often requires two incomes. Millions more workers provide caregiving to aging parents or their relatives with disabilities. In 2009, an estimated 66 million people provided unpaid caregiving, and most of them worked during that time. So not surprisingly, polls routinely show that families are extremely stressed.

A Rockefeller Foundation survey in 2009 found that 75 percent of Americans report experiencing stress in their daily lives, and other polls have shown more than 80 percent of workers are unhappy with the balance between their work and their life. This stress affects parents, and children, and other family members. It also hurts businesses when workers' productivity is affected because they are distracted, stressed, or stretched too far.

I might also add that in many of our studies that have been done on health, a lot of the impacts of bad health are either caused by undue stress or exacerbated, made even worse, by the stress that families have if there is an illness.

Unfortunately, our laws and workplace policies have not kept up with the changing workforce. They are designed with the assumption that families have a caregiver in the home to deal with emergencies and tend to day to day family needs, but this is often not the case. Work-family conflict has many forms and faces.

It is the professional dad who wants to leave work at a decent hour so he can be home for family dinner and put the kids to bed.

It is the low-wage mom who is trying to arrange childcare when her work schedule fluctuates every week; we are going to hear more about that from one of our witnesses. Her wages do not pay enough for quality care. She is docked pay if she takes the day off when her child gets sick.

It is the hardworking couple that has to tag team parenting, one taking a day shift while the other takes a nightshift so that someone is always there for the kids, but they are never there together as a family during the week.

It is the parent of a child with a disability who has to quit her job because she cannot find an afterschool program that will accommodate her child's significant disability, but her employer will not let her alter her schedule.

It is the new parents who want to take time off work with their new baby, but they have no leave or cannot afford to lose a paycheck.

It is the middle-aged woman trying to help her aging mother through a hospital stay, while holding down a full-time job that stretches to 60 hours a week.

All of these families are under enormous strain. All of these workers put their financial security or jobs at risk if they do what is right for their family. The stresses of these day to day situations are common, but they do not have to be.

We are here today to learn what families are experiencing and what we can do to help. These are problems that we, as a society,

need to address through sound public policies, and by doing everything we can to encourage all employers to adopt family friendly workplace policies. Policies like paid sick days, restoring a true 40 hour work week, making childcare more accessible, all of which I include in my bill to restore the middle class, the Rebuild America Act, as a starting point.

There is much we can do, and I look forward to exploring these, and other ideas, today. I am pleased to welcome today's witnesses. We will hear from experts in the field of work-family policy, and from a worker and mother who will tell us firsthand about the difficulties of raising a family and holding on to a job.

I am looking forward to hearing the testimony today, and learning more about the strains facing middle-class families, and discussing how we can, as a society, build security and opportunity for the future.

And with that, I recognize Senator Enzi.

#### OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman.

Good morning, and I want to welcome everybody to today's HELP committee hearing on balancing work and family.

For many working parents, achieving a good balance between work and family is a daily struggle. This is a struggle my wife and I experienced when we raised our children while she ran our shoe stores, and I worked sometimes there and other positions. Today, we do everything we can to support our children as they try to balance their own lives as they pursue their careers, provide for their families, and care for their children, which are our grandchildren.

For too many Americans, the daily struggle is not how to balance a job, but how to get a job. The data on the shrinking workforce is disturbing. This has been the worst jobs recovery since the Great Depression by far. Economists agree that unemployment is much worse than the 8.1 percent rate depicts. Millions of workers have simply dropped out of the workforce. With 3.7 job seekers for every opening, they have given up looking for work and are no longer counted, although they may want to go back to work. Unfortunately, we found that those who stay out of the workforce for long periods of time have trouble getting back in once the economy does finally rebound. I am afraid this might even be more of a problem in today's high tech workplaces where skills require constant updates.

I know the American public does not need to be reminded about the damage this jobless recovery is doing to our workforce. What they need is a government willing and able to focus on job creation. That is why it is so hard to understand the position this Administration has taken against the Keystone Pipeline, which would create 20,000 new jobs immediately that will grow into more than 500,000 U.S. jobs. Estimates indicate that it would bring \$138.4 million in annual property taxes for State and local governments, and \$6.5 billion in personal income for American workers. These staggering numbers are why many labor unions have stated strong support for the project, yet the Administration has directly halted the creation of these jobs. I understand another application to permit the pipeline has been submitted to the Administration, and I

hope we will not be denied this chance to add jobs to a jobless recession yet again.

Other promising job creating projects are being halted by the Administration's regulations, such as the building of new coal-fired power plants. Even the amazing progress being made in extracting natural gas is being threatened by this Administration's excessive regulation. The natural gas industry has created thousands of jobs and holds the promise of domestic energy security that could mean so much to our children's future.

The choices being made in Washington are directly impacting the job market, which is making the situation for struggling families even worse. In a good economy, employees have choices. They can choose between a job that offers some work from home, or provides onsite daycare, or is located near a desired school. They may select an employer because it provides exceptional healthcare, or educational benefits, or they may choose the highest wage and overtime pay possible so they can work hard and save up for the purchase of a family home.

As American families find their way through this period, there is one universal truth which is: there is not one single solution for every family. The multitude of options families can experiment with to find what works for them is a good thing. Therefore, the best thing we can do in Washington is to fire up job creation and let the economy expand upon itself so that employees have options again.

Of course, with even the best paid plans, the task of balancing work and family life is never easy. And when illness compounds the situation, the challenge becomes even greater. Most private sector employers are well aware of this reality, and increasingly responsive to it.

For example, in the most recent member benefit survey conducted by the Society for Human Resource Management, some 87 percent of the respondents reported their companies provided paid sick leave either under a separate sick leave program or as part of a general paid time off plan. Over 80 percent of the respondents also indicated that they provide both short-term and long-term disability insurance coverage, and an increasing number utilized even more creative approaches such as paid time off and sick leave banks or pools. Most employers make these provisions both because they know that in the competitive labor market, they must address this issue to attract and retain quality employees, and quality employees are good for business.

Today, the average cost of employee benefits for all employers in the private sector, nearly 30 percent of the total payroll cost, that is nearly \$8.43 an hour, yet only 28 percent of that \$8.43 benefit cost is currently mandated by law. The rest of it is just done. I expect the ratio will change quite a bit once the healthcare law kicks in, but what these numbers show is that employers are trying to find ways to provide benefits valued by employees.

However, some employees do not have paid sick leave available at their place of work. And as I mentioned previously, some of the employers decided rather than having them decide whether they are sick or just need some time, they just give them time and it is paid time off. The bulk of these individuals are employed by

smaller employers, and those small employers very often face the same costs squeeze and financial pressures that their employees face. That is a fact that we need to always keep in mind as we discuss wages and benefits.

We also need to remember that small companies grow into large companies when they are allowed to flourish. This is the great American advantage that has kept our economy on top for so long. Small companies that struggle to make payroll in the early years, can grow into successful companies that share profits with their employees, offer generous benefit packages, and flexible work environments.

One of today's witnesses, Mrs. Juanita Phillips, is representing a company exactly like this. In just 13 years, INTUITIVE has grown from a 2-person operation to an employer of 240 employees, and it was ranked as "The Second Best Small Company to Work for in America" in 2011. And in 2012, the "Military Times EDGE" named it "The Second Best Company for Veterans to Work For" nationwide. I would add that INTUITIVE was the smallest company on the list by far. Most of the other employers that were recognized had over 10,000 employees.

This is a story that we want to see happening over and over again all over this country. We have to be careful that actions we take in Washington do not crush the ability of small businesses to be born and flourish. Although, we probably all agree that the desirability of providing greater benefits for all working men and women, the issue is not a simple one, especially when we are talking about Federal Government mandates.

Whenever we impose unfunded mandates on employers, the money necessary to pay those increased costs have to come from somewhere. No matter how desirable the goal, one cannot simply dismiss the costs as unimportant or inconsequential. Here, the costs are decidedly not inconsequential, particularly for smaller businesses.

The pool of available labor dollars is not infinite, and when we mandate their expenditure for a specific purpose such as health insurance, we limit the ability of small employers to grow and create the flexible jobs today's employees are seeking.

I want to thank all of you for being here today, and I look forward to hearing your testimony.

The CHAIRMAN. Thank you, Senator Enzi.

We will move to our panel. I will introduce the witnesses.

We have first, Ms. Ann O'Leary, director of the Children and Families Program at the Center for the Next Generation, a non-profit aimed at supporting America's young people and families. Ms. O'Leary is also a senior fellow at the Center for American Progress; a lecturer at the University of California, Berkeley, School of Law; a graduate of Mount Holyoke College; Stanford University; and the University of California, Berkeley, School of Law.

Next, Judith Lichtman is a senior advisor at the National Partnership for Women and Families, which promotes both workplace fairness and policies that help employees meet the demands of work and family. Ms. Lichtman has been a leader in the women's movement for decades and as president of the Partnership, she was instrumental in passage of the Pregnancy Discrimination Act and

the Family and Medical Leave Act. She is a graduate of the University of Wisconsin Law School.

Kimberly Ortiz is the mother of two children and has worked for years in the retail industry in New York City. She was previously employed as an assistant manager at the Statue of Liberty gift shop and other retail jobs. She has attended Lehman College, part of the City University of New York.

Miss Juanita Phillips of Huntsville, AL is the director of human resources at Intuitive Research and Technology established in 1999. INTUITIVE is an engineering services and support organization based in Alabama. Ms. Phillips is also the governmental affairs director of the Society for Human Resource Management of Alabama. She received her Master of Science in Management and Human Resource Management from Florida Technical University.

We thank you all for being here. Your statements, which I went over last evening, will all be made a part of the record in their entirety. I would ask if you could sum it up in 5 minutes or so, we would appreciate it, and then we can get into a discussion. Again, thank you all very much.

Ms. O'Leary, we will start with you, and just go down the line. Welcome. Please proceed.

**STATEMENT OF ANN O'LEARY, J.D., DIRECTOR, CHILDREN AND FAMILIES PROGRAM, CENTER FOR THE NEXT GENERATION, SAN FRANCISCO, CA**

Ms. O'LEARY. Thank you very much, Chairman Harkin and Ranking Member Enzi, and members of the committee for the opportunity to testify on an issue that is so critical to America's future, supporting hardworking middle-class parents, so that they can improve the well-being of America's children.

My name is Ann O'Leary. I am the Children and Families' program director at the Center for the Next Generation, and a senior fellow at the Center for American Progress. I come before you as an expert on the subject of work-family laws and policy.

The United States has built its economy and social policies around the assumption that when a child needs care, there will be a family member who will be able to be away from work to care for that child. This assumption has long been faulty as mothers have rapidly increased their participation in the workforce. We have entered a world of work that has never fully updated its employment policies to account for workers that combine work and family responsibilities.

It is now all too evident that few families have a stay-at-home parent as the vast majority of families now rely on the income of mothers. Today, just 25 percent of families consist of married parents with one at home and the other working. The income of mothers has, thus, become an essential component of family stability; 4 in 10 families rely on mothers to bring home at least half of the family income. Another 2 in 10 rely on mothers to earn at least a quarter of the family income.

What is less well-known is that children are increasingly facing health and educational challenges that demand greater time and attention of their parents. From 1994 to 2006, the prevalence of chronic health conditions in children—including asthma, obesity,

and behavior and learning problems—doubled from 13 percent to 26 percent of children. More than a quarter of our children have chronic health conditions. Any one of these issues leads to absences in school for the child, and missed work for parents.

A child with asthma, for example, misses an average of 8 school days a year. This means that parents must miss work to care for the child, or to take the child to a doctor, or to have to find back up care, or simply go to work and leave the child at home alone.

The other trend impacting children is the rise of single parent households, and the correlation between single parent households and poor educational outcomes. In 1975, 9 percent of our families were headed by a single, employed parent. Today, that number is 24 percent.

International assessments of reading skills illustrate what that means. U.S. children in single parent households scored 23 points lower than their peers from two-parent families. That is true even when you account for socioeconomic background. Other countries with large populations of single parent households, such as Chile or Austria, did not see such a difference in educational attainment. Researchers attribute this disparity to our lack of pro-family policies that provide single parents sufficient time and resources for their children, including our lack of paid family leave.

The United States has no laws that require employers to provide paid sick days or provide workers with the right to even request flexible work hours, and many middle-income workers do not receive the same pro-family workplace policies as their professional counterparts. Up to one-third of middle-income wage earners have no access to paid sick days. Only half of the American workforce has the right to take unpaid family and medical leave with a guarantee that they will not be fired for doing so. As for guaranteed paid family leave, it is the law in 178 countries. That is 91 percent of the world's nations. It is not the law in the United States, nor do we have paid family and medical leave. Employers that do offer these benefits tend to provide them almost exclusively to professional and high-end workers.

As Mother's Day approaches, it is fitting to think of the challenging job we ask of mothers and fathers. We ask them to raise their children on their own with no guaranteed days off for even when their child is born or in the early days when their child is born. We ask them to provide care and attention to a child with a chronic health condition, but allow them no flexibility to schedule work and doctor's appointments to make that possible. We ask far too many parents, many of whom are single mothers, to subsist on a minimum wage that barely allows an individual to live above the poverty line, affording them little chance to provide quality childcare.

These challenges will not be addressed by a quick fix, but if we do not tackle these hard problems of providing true, pro-family workplace policies, and ensuring that our country has affordable, quality childcare, we will be leaving a generation of parents unable to meet the needs of their children, and a generation of American children less healthy and educated than they deserve to be.

I will leave you with one final thought that has always stayed with me. Upon the birth of my first child, my very dear, elder, and

now late cousin, Deborah Dalfonso, told me that the greatest gift that I could give my child would be the gift of my time. The gift she was able to give her own daughter before MS took her from us far too early.

When I do my work, I often think of Deborah and think what a different country it would be if we had an employer policy that truly allowed parents, both to economically support their families and to give their children the great gift of time.

I thank you, Chairman Harkin and Senator Enzi, once again, for calling this hearing and for making clear that these issues are central to rebuilding the middle class, the strong middle class, we need in America.

Thank you.

[The prepared statement of Ms. O’Leary follows:]

PREPARED STATEMENT OF ANN O’LEARY, J.D.

Thank you, Chairman Harkin, Ranking Member Enzi, and members of the committee for the opportunity to testify on an issue that is so critical to America’s families and the well-being of America’s children—how we aid families in meeting their responsibilities at home and at work.

My name is Ann O’Leary. I am the Children and Families program director at The Center for the Next Generation, a non-profit, non-partisan think tank in San Francisco, and a Senior Fellow at the Center for American Progress. I come before you as an expert on the subject of work-family laws and policy. I have authored numerous scholarly articles and policy reports on the subject. My testimony today is drawn in part from a recent book chapter I authored, “Risk Sharing When Work and Family Clash: The Need for Government and Employer Innovation,” published in a volume I co-edited with Yale Political Science Professor Jacob Hacker, *Shared Responsibility, Shared Risk: Government, Markets and Social Policy in the Twenty-First Century* (Oxford University Press, 2012).

CHANGING FAMILY WORK PATTERNS

The United States has built its economy and its social policies around the assumption that when a child needs care or a family member is ill someone in the family is able and available to be away from work to provide that care. This assumption has long been faulty as mothers have rapidly increased their participation in the workforce and their contributions to the family income, while employment benefits have remained stagnant—modeled on the male worker with a stay-at-home spouse—for the large majority of middle class and low-income workers.

It is a well-known fact, and a lived reality, that few families have a stay-at-home parent and the vast majority of families are relying on the labor market income of mothers. Today, just 25 percent of families consist of two married parents, with one parent at home and one parent in the labor force.<sup>1</sup> Earned income by mothers has become an essential component in order for families to sustain themselves—4 in 10 families rely on mothers to bring home all or at least half of the family income and another 2 in 10 families rely on mothers to bring home at least a quarter of the family income.<sup>2</sup> Male wages for full-time middle-income workers have stagnated since 1969 making the contribution of women’s wages all the more important.<sup>3</sup>

CHANGING NEEDS OF CHILDREN

What is less well-known is that children are increasingly facing health and educational challenges that demand greater time and attention from parents. From 1994 to 2006 the prevalence of chronic health conditions in children—including

<sup>1</sup>See Bureau of Labor Statistics, *Economic News Release: Table 4. Families with Own Children: Employment Status of Parents by Age of Youngest Child and Family Type, 2010–11 Annual Averages*, prepared by the Bureau of Labor Statistics, U.S. Department of Labor, 2012, available at: <http://www.bls.gov/news.release/famee.t04.htm>.

<sup>2</sup>Sarah Jane Glynn, “The New Breadwinners: 2010 Update. Rates of Women Supporting Their Families Economically Increased Since 2007,” Center for American Progress, April 2012.

<sup>3</sup>Michael Greenstone and Adam Looney, “Have Earnings Actually Declined?” The Brookings Institution, Hamilton Project, March 4, 2011 (stating that in 2009 the median full-time male worker aged 25–64 brought home \$48,000—roughly the same as in 1969 after adjusting for inflation).

asthma, obesity, and behavior/learning problems—doubled from 13 percent to 26 percent of children.<sup>4</sup> Any one of these health issues leads to missed school for children and missed work for parents. Take asthma as an example. The Center for Disease Control estimates that 10 million children in America have asthma. A child with asthma misses an average of eight school days a year.<sup>5</sup> This means parents must miss work to care for the child or to take the child to the doctor's office, find back-up care, or go to work and leave the child home alone.

The other trend impacting children is the rise in single-parent households, and the correlation between single-parent headed households and poor educational outcomes in the United States. In 1975, 9 percent of families were headed by a single employed parent; today it is 24 percent of families.<sup>6</sup> In fact, last year half of all births to women under 30 were to single mothers.<sup>7</sup> Unfortunately, on an international assessment of reading skills, U.S. children in single-parent households scored 23 points lower than their peers from two-parent families, even after accounting for socio-economic background. Yet other countries with similarly large populations of single-parent households, such as Chile, Switzerland, Portugal and Austria, did not see significant differences in the educational performance of children from single-parent and two-parent families. Researchers attribute the educational difficulties faced by children in the United States to our lack of pro-family policies that leave single parents without time and resources for their children, including a lack of paid maternity leave and lack of any universal family or child allowance.<sup>8</sup>

#### CHANGING NEED OF ELDERS

The need for time to care for and guide the education of children is not the only family responsibility pressing on working parents. They are also facing increasing responsibilities to care for ailing and elderly parents.

The U.S. Census Bureau predicts that the 65 and older population will more than double from nearly 35 million in 2000 to over 71 million in 2030, going from 12 percent to nearly 20 percent of the population.<sup>9</sup> This increase is due both to the aging of the baby boomers and to more Americans living longer thanks to advances in overall health and medical care. At the same time, the population of typical caregivers—adult children ages 45 to 65—is expected to only increase by 25 percent during this time period.<sup>10</sup> The math just doesn't add up in terms of the ratio of caregivers to older Americans. In addition, most family caregivers are combining work and care, making the challenges of caring for an elder parent or other relative extremely challenging.

Not only are Americans living longer, but the health conditions they face in later life are changing. The incidence of Alzheimer's and other dementias is expected to increase. By 2050, researchers predict that as many as 16 million individuals age 65 and older will be living with Alzheimer's disease, triple the number living with the disease today.<sup>11</sup> What's more, today's generation of Alzheimer's caregivers face unique challenges. With many women giving birth later in life, 37 percent of today's female caregivers are caring for both a family member with Alzheimer's disease and children under 18 years of age still living at home.<sup>12</sup>

<sup>4</sup>Jeanne Van Cleave, ET al., "Dynamics of Obesity and Chronic Health Conditions Among Children and Youth," *Journal of American Medical Association*, 2010; 303(19):1915.

<sup>5</sup>Asthma and Allergy Foundation of America, "Asthma Facts and Figures," available at: [http://www.aafa.org/print.cfm?id=8&sub=42#\\_ftn20](http://www.aafa.org/print.cfm?id=8&sub=42#_ftn20).

<sup>6</sup>Institute of Education Sciences, *Indicator 18: Parent's Employment, Employment Status of Parents with Own Children under 18 Years Old, by Type of Family: 1975 to 1993*, prepared by the Institute of Education Sciences, U.S. Department of Education, 1996; Mark Mat her, "U.S. Children in Single Mother Families," Population Reference Bureau, Data Brief, May 2010.

<sup>7</sup>Jason DeParle, "For Women Under 30, Most Births Occur Outside Marriage," *The New York Times*, February 17, 2012.

<sup>8</sup>Suet-Ling Pong, ET al., "Family Policies and Children's School Achievement in Single-Versus Two-Parent Families," *Journal of Marriage and Family* 65 (August 2003); 681-99.

<sup>9</sup>U.S. Census Bureau, "State Interim Population Projections by Age and Sex, Table B1, Interim Projections of the Population by Selected Age Groups for the United States and States: April 1, 2000 to July 1, 2030," available at <http://www.census.gov/population/www/projections/files/SummaryTabB1.pdf>.

<sup>10</sup>Katherine Mack and Lee Thompson with Robert Friedland, "Data Profiles, Family Caregivers of Older Persons: Adult Children" (Washington: The Center on an Aging Society, Georgetown University, 2005).

<sup>11</sup>L.E. Hebert and others, "Alzheimer's Disease in the U.S. Population: Prevalence Estimates Using the 2000 Census," *Archives of Neurology* 60(2003):1119-22, p. 1121.

<sup>12</sup>*Ibid.*

## UNCHANGED WORKPLACE POLICIES

With few adults left at home to attend to unexpected family caregiving needs combined with increasing health and educational needs of children and an increasing need to care for aging relatives, workers need greater flexibility to combine their responsibilities at home and at work.

Yet the United States has no laws requiring that employers provide paid sick days or provide workers with a right to receive or even request flexible work hours.<sup>13</sup> Middle-income workers do not receive the same pro-family workplace policies as their professional counterparts. Between one-quarter and one-third of those workers making middle-income wages have no access to paid sick days.<sup>14</sup> In addition, middle-income workers commonly have highly rigid work schedules that hold workers to a strict absentee policy regardless of the reason for needing to be absent, which can lead to loss of jobs when a worker must miss work due to an unavoidable family conflict.<sup>15</sup>

Only half of the American workforce has the right to take unpaid family and medical leave with a guarantee that they won't be fired for doing so.<sup>16</sup> While the policy of unpaid job-protected family and medical leave, guaranteed to eligible workers through the Family and Medical Leave Act, is most likely to benefit middle-income workers,<sup>17</sup> the hit to their family income can still be quite dramatic and can discourage the primary breadwinner (often the man) from taking time off upon the arrival of a newborn or to care for a sick child because the family simply cannot afford it.

While 91 percent of the world's nations (178 countries) guarantee paid maternity leave under national law, the United States does not. We have no national social insurance to provide wage replacement when a worker needs to take leave for family or medical reasons, and employers that offer these benefits tend to provide them almost exclusively to professional and high-end workers.<sup>18</sup>

Despite increased Federal investments in the last several years, direct support for child care and elder care reaches few families, and provides limited assistance for those it does reach.<sup>19</sup> And our government health programs—Medicare for the elderly and disabled and Medicaid for the poor—have policies that favor family care over institutional care, operating on the assumption that family members are available to provide such care.<sup>20</sup> These policies are good for patients and welcomed by family members, but in order for them to be effective workers must be able to take time away from work without losing their job to provide this care.

## CONSEQUENCES FOR WORKERS AND FAMILIES

The primary risk to families when work and care clash is the loss of steady income workers experience when they lose their job or cut back their hours to address the family caregiving needs. Many workers are unable to replace earned income with employer-provided paid leave, government assistance, or family savings. An additional financial burden families face is the high cost of providing care while family

<sup>13</sup> Ann O'Leary and Karen Kornbluh, "Family Friendly for All Families," in *The Shriver Report: A Woman's Nation Changes Everything*, ed. Heather Boushey and Ann O'Leary (Washington, DC: Center for American Progress, 2009), 91–93.

<sup>14</sup> Bureau of Labor Statistics, Table 6. Selected Paid Leave Policies: Access, National Compensation Survey, March 2011 (showing that 34 percent of private sector workers making the second lowest 25th percentile of average wages did not have access to paid sick days and 26 percent of workers making the second highest 25th percentile of average wages did not have access to paid sick days).

<sup>15</sup> Joan C. Williams and Heather Boushey, "The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle," *The Center for American Progress and WorkLife Law*, January 2010.

<sup>16</sup> *Family and Medical Leave Act, U.S. Code* 29 (2000), §§2601–54; Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 Surveys," *Monthly Labor Review* 124(9) (2001): 19–20.

<sup>17</sup> U.S. Department of Labor, "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys," 2000 Survey, Table 3.3. Demographic Characteristics of Leave Takers by Eligibility Status (showing that 55.2 percent of FMLA eligible leave takers make between \$30,000 and \$75,000).

<sup>18</sup> Workplace Flexibility 2010 and Berkeley CHEFS, "Chapter 2: Temporary Disability Insurance," in *Family Security Insurance: A New Foundation for Economic Security* (Washington: Workplace Flexibility 2010 and Berkeley CHEFS, 2010) (hereinafter "Family Security Insurance Report").

<sup>19</sup> Peter S. Goodman, "Cuts to Child Care Subsidy Thwart More Job Seekers," *New York Times*, May 23, 2010.

<sup>20</sup> See Andrew E. Scharlach and Amanda J. Lehning, "Government's Role in Aging and Long-Term Care," in *Shared Responsibility, Shared Risk: Government, Markets and U.S. Social Policy in the Twenty-First Century*, ed. Jacob S. Hacker and Ann O'Leary (New York, NY: Oxford University Press, 2011).

members work—for example, a spot at a child care center or a paid caregiver to assist with an ailing parent. Middle-income families face unique difficulties because they are often without government aid, without employer policies to support them, and without enough family income to afford high quality child care or family care for an ailing relative. The other detriment to family is the missed time with their child or ailing relative, which has negative health and educational impacts as well as intangible effects on parents and children.

#### *Decrease in Family Incomes Due to Work-Family Clashes*

Families use different strategies for managing work and care, many of which lead to lower incomes (and sometimes no income). For some families negotiating work and caregiving, one member works part-time—more often the woman in a two-parent family.<sup>21</sup> Other workers adjust their work schedules to deal with caregiving conflicts that may ultimately reduce their income, including going to work late or leaving early.<sup>22</sup> Other strategies directly lead to lower incomes, including refusing overtime work or turning down a promotion.<sup>23</sup> Finally, some workers simply leave their jobs because they cannot combine work and care.<sup>24</sup>

These decreases in labor market participation have short-term and long-term consequences for family economic security, including loss of income, loss of health insurance, loss in retirement earnings, and negative impacts on future earnings potential.<sup>25</sup>

#### *Inability to Afford Child Care and Elder Care*

The additional risk that workers face in combining work and care is the inability to afford paid care for children, sick family members or aging relatives. Low-income workers and lower middle-income families are much more likely to spend a significant percentage of their income on child care expenses. A single mother working full-time for minimum wage will need to spend approximately 32 percent of her family income on child care expenses, and a two-parent family with both parents working full-time minimum wage jobs will end up spending about 18 percent of their family income on child care expenses.<sup>26</sup> Lower middle-class families are also much more likely to rely on child care provided by relatives, including another working parent—termed “tag-team parenting” as one person provides care to the children while the other works, and then they trade shifts.<sup>27</sup> These informal or within-family child care arrangements are more prone to break down, causing workers to miss work.

<sup>21</sup> Bureau of Labor Statistics, *Women in the Labor Force: A Databook*, prepared by the Bureau of Labor Statistics, U.S. Department of Labor, 2009, “Employed persons by full- and part-time status and sex, 1970–2008 annual averages, Table 20,” (showing that just under 25 percent of women work part-time compared to just over 17 percent of men).

<sup>22</sup> MetLife Mature Market Institute, National Alliance for Caregiving, and Center for Productive Aging at Towson University, *The MetLife Study of Sons at Work Balancing Employment and Eldercare* (Westport, CT: Mature Market Institute MetLife, 2003) (showing that 78 percent of men and 84 percent of women reported coming in late or leaving early as a result of an elder care conflict) (hereinafter *Sons at Work Study*); “Alzheimer’s Association Women & Alzheimer’s Poll, 2010,” Ann O’Leary, “What’s the Workplace Impact?,” in *The Shriver Report: A Woman’s Nation Take on Alzheimer’s*, ed. Angela Timashenka Geiger, ET al. (Washington, DC: Alzheimer’s Association, 2010) (hereinafter *Women & Alzheimer’s Poll*) (finding that 61 percent of female and 70 percent of male working Alzheimer’s caregivers reported needed to go in late or leave early from work as a result of caregiving conflict).

<sup>23</sup> MetLife, *Sons at Work Study* (showing 8 percent of women and 8 percent of men turned down a promotion due to an elder caregiving conflict; and showing that 16 percent of men and 24 percent of women turned down overtime work as a result of caregiving responsibilities); “Women & Alzheimer’s Poll” (showing that 11 percent of women and 14 percent of men turned down promotion due to caregiving conflict; and showing that 11 percent of women and 8 percent of men lost a job benefit as a result of caregiving).

<sup>24</sup> *Sons at Work Study* (showing 20 percent of women and 11 percent of men considered quitting their jobs due to an elder caregiving conflict); “Women & Alzheimer’s Poll” (showing that 12 percent of women and 8 percent of men had to give up working entirely due to caregiving conflict).

<sup>25</sup> Gillian Lester, “A Defense of Paid Family Leave,” *Harvard Women’s Law Journal* 28 (2005): 21–22.

<sup>26</sup> Kristin Smith and Kristi Gozjolko, *Low Income and Impoverished Families Pay More Disproportionately for Child Care* (Durham, NH: Carsey Institute at the University of New Hampshire Policy Brief No. 16, 2010).

<sup>27</sup> “Nearly Half of Preschoolers Receive Child Care from Relatives,” U.S. Census Bureau press release, February 28, 2008 (noting that among the 11.8 million children younger than 5 whose mothers were employed, 30 percent were cared for on a regular basis by a grandparent during their mother’s working hours and another 25 percent received care from their fathers during the mother’s working hours).

*Lack of Time With Children and Ailing Relatives has Negative Impacts*

In addition to the quantifiable loss of family income and inability to afford child care, a lack of ability to take time away from work when a family member needs care or support has real negative impacts on their well-being. In the first years of a child's life, a child's overall physical, cognitive, and behavioral outcomes are better when his or her parents have sufficient time off work after the birth or adoption of a child.<sup>28</sup> Further, parental workplace flexibility during the first year of a child's life, including a significant amount of time off and/or flexibility in scheduling, can have positive developmental effects for children.<sup>29</sup> And according to a research review conducted by the Institute for Women's Policy Research, parents play a critical role in helping children improve their health after a hospitalization and in helping children cope with chronic illnesses, including asthma and diabetes, both of which lead to better educational outcomes for children.<sup>30</sup>

GOVERNMENT RESPONSE

The political rhetoric and policy proposals to address "work-family conflict" have been strikingly similar across the decades. Since the 1960s, Presidential Commissions and reports have recommended various forms of workplace flexibility, including increased government investments in child care and paid maternity or paid family leave.<sup>31</sup>

Despite many years of consistent recommendations there is no comprehensive national strategy to address the mismatch between workplace rules and family responsibilities. Instead, the Government has addressed problems of work-care conflict by requiring employers to offer workplace benefits that aid workers in providing unpaid family care and in accessing benefits that could be used for paid maternity leave but only if the employer otherwise has a short-term disability policy; by directly offering subsidies or benefits to allow low-income families to purchase child care; and by offering now limited cash aid to our lowest income parents as long as they agree to work for the cash aid. I will focus only on the first two strategies in this testimony.

*Employer Policies*

The Government plays an active role in incentivizing and mandating certain employer-provided benefits. While the Government does not require employers to provide paid family leave, paid sick days, or short-term disability benefits it forbids employers from discriminating on the basis of gender in the provision of employee benefits.

This antidiscrimination law—Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978 (PDA)<sup>32</sup>—has had its strongest impact on the provision of paid leave for pregnancy and childbirth for highly educated female workers. Title VII only requires employers to offer benefits to all employees on the same terms; it does not proactively require employers to provide paid maternity leave or paid family leave. For college-educated women workers, the law has made a big difference because many employers of professional workers were already offering short-term disability insurance and paid sick days. The PDA effectively required those benefits to be made available for the purposes of pregnancy and child birth. From 1961 to 1965, only 14 percent of college-educated women workers received paid leave before or after the birth of their first child.<sup>33</sup> This number dramatically increased to 59 percent of college-educated women workers in the immediate period after passage of the PDA, and holds at 66 percent of professional work-

<sup>28</sup>Christopher Ruhm, Parental Employment and Child Cognitive Development, 39 J. Hum. Resources 155 (2004); Jeanne Brooks-Gunn, Wen-Jui Han & Jane Waldfogel, Maternal Employment and Child Cognitive Outcomes in the First Three Years of Life: The NICHD Study of Early Child Care, 73 Child Dev. 1052 (2002); Christopher Ruhm, Parental Leave and Child Health, 19 J. Health Econ. 931 (2000); Pauline Hopper & Edward Zigler, The Medical and Social Science Basis for a National Infant Care Leave Policy, 58 Am. J. Orthopsychiatry 324 (1988).

<sup>29</sup>Jeanne Brooks-Gunn, Wen-Jui Han & Jane Waldfogel, First-Year Maternal Employment and Child Development in the First Seven Years, 75 Monographs of Soc'y for Res. in Child Dev. 1, 35–49 (2010).

<sup>30</sup>Institute for Women's Policy Research, "Denver Paid Sick Days Would Promote Children's School Success," October 2011.

<sup>31</sup>For a review of government action, see O'Leary and Kornbluh, "Family Friendly for All Families," 78.

<sup>32</sup>Civil Rights Act of 1964, U.S. Code 42 (2006) § 2000e–2; Pregnancy Discrimination Act, U.S. Code 42 (2006) § 2000e(k).

<sup>33</sup>Lynda Laughlin, *Maternity Leave and Employment Patterns of First Time Mothers: 1961–2008*, (Washington, DC: U.S. Census Bureau, October 2011), 12 (Figure 3).

ers in 2008.<sup>34</sup> For less-educated workers, the law has made little difference with regard to employee benefits because these workers are less likely to have access to any paid leave.<sup>35</sup> For workers with less than a high school degree, the access to paid leave after child birth remained nearly constant from 1961 to 2008 fluctuating between 18 and 19 percent.<sup>36</sup>

In addition to the title VII requirement of equal access to employer-sponsored benefits required, the Government also affirmatively requires some employers to offer job-protected family leave to workers. The Family and Medical Leave Act of 1993 (FMLA) mandates that certain employers provide unpaid leave, regardless of gender, to care for family or medical needs. FMLA provides qualified employees with the right to take up to 12 weeks each year of job-protected unpaid leave for the birth or care of the employee's child, care of an immediate family member with a serious health condition, or for an employee's own serious health condition.<sup>37</sup> This law provides critical economic security to eligible workers because it requires that the worker get his or her job back upon returning from leave. It also prevents employers from dropping or reducing an employee's health insurance benefits because the worker took FMLA leave: employers are required to maintain the same group health plan coverage before and after a worker has taken FMLA leave.<sup>38</sup> As important as these benefits are, only about half of the workforce is covered under FMLA.<sup>39</sup> Furthermore, many people caring for ailing relatives do not qualify for FMLA because workers may only take time off to care for a spouse, child or parent. For example, 40 percent of Alzheimer's caregivers are providing care to a relative who would fall outside the allowable family members for whom a caregiver can take leave under the FMLA, including grandparents, siblings, in-laws, and aunts and uncles.<sup>40</sup>

Too many lower and middle-income families work for employers that do not offer benefits to all workers that would allow mothers to access them on an equal basis and many employees do not qualify for FMLA.

#### *Child Care Support*

The Government provides child care support both in the form of subsidies to low-income working parents and tax credits to middle-income parents. In both instances, the aid barely scratches the surface of need. While Congress infused federally supported child care programs with \$4.1 billion extra dollars as part of the economic recovery package, the funding did not bring the program back to the number of families it was serving 5 years ago. With more and more States unable to provide State funding to support child care, many workers struggle to afford child care while they work.<sup>41</sup>

#### CONCLUSION

As Mother's Day approaches, it is fitting to think of the challenging job we are asking mothers to do. For too many mothers, we are asking them to raise their children on their own with no time off even for the child's birth or early days. For other mothers, we are asking them to provide the best care and attention to a child with a chronic health condition and allowing them no flexibility to schedule work and doctor's appointments to make that possible. For too many, we are asking them to subsist on a minimum wage that barely provides poverty wages and offering them no help to afford quality child care. Of course, mothers are not alone—it is also fathers who face these same challenges.

These challenges will not be addressed by a quick fix, but if we don't tackle these hard problems—by increasing parental income, providing true pro-family workplace policies, and ensuring that our country has affordable, quality child care—we will be leaving a generation of parents feeling unable to meet the needs of their children and a generation of children less healthy and educated than they deserve to be.

The CHAIRMAN. Thank you very much, Ms. O'Leary.  
Ms. Lichtman, welcome.

<sup>34</sup> Ibid.

<sup>35</sup> Workplace Flexibility 2010 and Berkeley CHEFS, *Family Security Insurance Report*, Chapter 2.

<sup>36</sup> Ibid.

<sup>37</sup> *Family and Medical Leave Act*, U.S. Code 29 (2000) §§ 2601–54.

<sup>38</sup> Ibid., §§ 2601, 2614(c).

<sup>39</sup> Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 Surveys," *Monthly Labor Review* 124(9) (2001): 19–20.

<sup>40</sup> Alzheimer's Association, "Women & Alzheimer's Poll" (2010).

<sup>41</sup> Goodman, "Cuts to Child Care Subsidy Thwart More Job Seekers."

**STATEMENT OF JUDITH L. LICHTMAN, SENIOR ADVISOR, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES, WASHINGTON, DC**

Ms. LICHTMAN. Good morning, Chairman Harkin, Ranking Member Enzi, members of the committee, and my fellow panelists.

I particularly want to thank you, Senator Harkin, as the lead sponsor of the Rebuild America Act. You have been a tireless and effective champion for middle class families for many decades.

I am Judith Lichtman, senior advisor at the National Partnership for Women and Families, a nonprofit, nonpartisan advocacy organization which, for 40 years, has worked to promote fairness in the workplace, access to quality, affordable healthcare, and policies that help women and men meet the dual demands of work and family.

This hearing comes at a critical time for our Nation's workers and their families. As Ann has discussed, demographic changes and an uneven recovery point to a perfect storm that demands new national public policies.

Our society has changed, but our Nation's workplace policies have not kept pace. Our chief national work-family law, the Federal Family and Medical Leave Act of 1993, was an important first step to help workers manage the dual demands of work and family. It is working well and it has been used more than 100 million times.

But FMLA was only a first step. Our Nation needs a strong work-family policy that helps families stay in the middle class and help those with lower incomes to gain upward mobility.

These policies include job protected paid sick days, paid family and medical leave, flexible work arrangements, affordable childcare and job protected time away from work to attend school meetings, or preventive medical care appointments.

Other policies, such as raising the minimum wage, protecting workers' ability to earn overtime, and protecting the rights of workers to organize are also critically important to middle-class prosperity and to mobility.

False assumptions contribute to our Nation's failure to provide working families with public policies they need. The most egregious false assumptions are the ones that relate to work-family conflicts and seeing it as just nothing more than a personal problem, in which government has no role to play, and that we should let the private sector fashion these policies on a voluntary basis. But let us be clear, public policies are critically important in setting our Nation's course and in building a strong middle class.

In the 21st century, national standards that build on the success of FMLA are needed to help families maintain their short-term financial stability and protect their long-term economic security when illness strikes or medical needs arise.

We also need to strengthen our national commitment to childcare, to be sure that the next generation has the best possible start. We also believe it is time to face the reality that voluntary, private sector action has real limits. The absence of a national paid sick day standard has left more than 40 million workers without access to even a single paid sick day which too often leads to economic hardships, job loss, and poor health.

The Rebuild America Act includes, among other important provisions, a critical step toward a more family friendly Nation, the Healthy Families Act. This legislation creates a national paid sick day standard that would allow workers to earn up to 7 paid sick days a year to recover from short-term illnesses, to care for sick family members, to seek routine medical care, or to seek assistance for domestic violence, sexual assault, or stalking. Enacting this law would allow an additional 30.3 million workers to gain access to paid sick days covering almost 90 percent of the private sector.

On Tuesday, the National Partnership released a report called "Expecting Better: A State By State Analysis," and sadly, what this report did was to point out that too few States have adopted innovations that help working families meet their responsibilities, and that is why national action is so critical and so timely.

Beyond providing paid sick days and paid family leave, we also have to look to expand workplace flexibility in a meaningful way.

And finally, we recommend several ways to expand the Family and Medical Leave Act to include workers, and small businesses, and those who work part-time to allow leave to address domestic violence, sexual assault, or stalking; and to expand the definition of family member to allow domestic partners, and the children of domestic partners, to become eligible.

Laws like the Family and Medical Leave Act could not be more important in these tough economic times, and more workers need access to the protection it affords.

Mr. Chairman, Senators, working families in our country need and want family friendly policies that promote their economic security including paid sick days, paid family leave, workplace flexibility, and expanded FMLA.

Importantly, adopting these policies will help strengthen the middle class, promote economic security for all families regardless of income, and help rebuild our economy. These policies are about renewing the American Dream for millions of workers who play by the rules, and deserve a fair shot.

I thank you.

[The prepared statement of Ms. Lichtman follows:]

#### PREPARED STATEMENT OF JUDITH L. LICHTMAN

Good morning, Chairman Harkin, Ranking Member Enzi, members of the committee and my fellow panelists. Thank you for inviting me to testify on behalf of the National Partnership for Women & Families. I particularly want to thank you, Senator Harkin. As the lead sponsor of the Rebuild America Act, you have been a tireless and effective champion for middle class families.

I am Judith Lichtman, senior advisor at the National Partnership for Women & Families, a nonprofit, nonpartisan advocacy organization. For four decades, we have fought for every major policy advance that has helped women and families. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help women and men meet the dual demands of work and family. Our goal is to create a society that is free, fair and just, where nobody has to experience discrimination, all workplaces are family friendly, and every family has access to quality, affordable health care and real economic security.

#### AN URGENT NEED FOR A NATIONAL COMMITMENT TO WORKING FAMILIES

This hearing comes at a critical time for our Nation's workers and their families. There is an urgent need for a national commitment to help men and women manage the dual demands of work and family. The economy is recovering unevenly, with a labor market that is failing to create enough jobs for those seeking employment. Fewer jobs, less income and slower economic growth mean workers are stretched

thin and face bigger challenges when managing work and family responsibilities. Women now make up half of America's workforce, and their incomes are increasingly important to families' economic survival. At the same time, women continue to have primary responsibility for family caregiving. Between 1975 and 2009, the share of women in the labor force with children under 18 increased from 47.4 percent to 71.3 percent.<sup>1</sup> Working men are also investing more time in child care and are reporting higher levels of work-family conflict. And many more U.S. workers are assuming eldercare responsibilities—a trend that will intensify as our country's population ages. These and other demographic changes discussed today point to a perfect storm that demands new national public policies.

#### PUBLIC POLICIES ARE NEEDED TO REFLECT OUR CHANGING SOCIETY

Our society has changed, but our Nation's workplace policies have not kept pace. Our chief national work-family law, the Family and Medical Leave Act (FMLA), was enacted nearly 20 years ago as an important first step to help workers manage the dual demands of work and family. The law has been used more than 100 million times by workers to care for newborn and newly adopted children, for children, spouses and parents with serious health conditions, and to address their own serious health needs. Laws like the FMLA could not be more important in these tough economic times, and more workers need access to the protections it affords.<sup>2</sup>

Indeed, there have been recent advances. In 2008 and again in 2009, the FMLA was amended to help military families and to cover flight crews. Senator Merkley's provision in the 2010 health reform law, which ensures new mothers have the time and space to pump breast milk at work, was another step forward. Yet significant additional progress toward securing national family friendly policies is badly needed.

Adopting strong work-family policies helps families stay in the middle class and helps those with lower incomes gain upward mobility. Workers want and need a comprehensive set of policies that recognize their responsibilities at home as their children grow and their parents or other loved ones age. These policies include job-protected paid sick days, paid family and medical leave, flexible work arrangements, affordable child care and job-protected time away from work to attend school meetings or preventive medical care appointments. Other policies, such as raising the minimum wage, protecting workers' ability to earn overtime and protecting the right of workers to organize, are also critically important to middle class prosperity and mobility.

Other countries understand working families' need for family friendly policies. The United States stands alone among industrialized nations in its failure to adopt national policies that help workers take time off for day-to-day medical needs, serious illnesses or to care for new babies. Out of 178 countries, the United States is one of just four that fails to provide paid maternity or paternity leave.<sup>3</sup> And according to the Center for Economic and Policy Research, the United States is the only one of 22 countries ranked highly for economic development that fails to guarantee workers paid time off for illness.<sup>4</sup>

#### FALSE ASSUMPTIONS HAVE IMPEDED OUR PROGRESS

False assumptions contribute to our Nation's failure to provide working families with the policies they need. The most egregious false assumption is that work-family conflict is a personal problem and that government has no role to play. But let's be clear: Public policies are critically important in setting our Nation's course. Minimum wage and overtime laws, laws regulating working conditions and other standards that we now take for granted helped build our middle class. In the 21st century, national standards that build on the success of the FMLA are needed to help

<sup>1</sup>U.S. Bureau of Labor Statistics. (2010). Women in the Labor Force: A Databook (2010 Edition). *Employment status of women by presence and age of youngest child, March 1975–2010* (Table 7). Retrieved 7 May 2012, from <http://www.bls.gov/cps/wlf-table7-2011.pdf>.

<sup>2</sup>The U.S. Supreme Court struck down one of the law's fundamental provisions earlier this year in *Coleman v. Maryland Court of Appeals*. With that decision, the Court deprived millions of State workers meaningful recourse if their request to take leave under the FMLA to recover from serious illness, including pregnancy and childbirth, is wrongly denied. It was a deeply troubling decision, and it sends us in exactly the wrong direction.

<sup>3</sup>Heymann, J., & Earle, A. (2009). *Raising the Global Floor: Dismantling the Myth That We Can't Afford Good Working Conditions for Everyone*. Stanford, CA: Stanford University Press.

<sup>4</sup>Heymann, J., Rho, H.J., Schmitt, J. & Earle, A. (2009). *Contagion Nation: A Comparison of Paid Sick Day Policies in 22 Countries*. Center for Economic and Policy Research Publication. Retrieved 7 May 2012, from <http://www.cepr.net/documents/publications/paid-sick-days-2009-05.pdf>.

working fathers in Iowa, adult daughters caring for elderly parents in Wyoming and workers in every other corner of this Nation maintain their short-term financial stability and protect their long-term economic security when illness strikes or medical needs arise. We also need to strengthen our national commitment to child care to be sure that the next generation has the best possible start.

A second false and harmful assumption is that expanding work-family policies harms businesses. In fact, these policies benefit business. Research confirms what working families and responsible employers already know: When businesses take care of their workers, they are better able to retain them, and when workers have the security of paid time off and flexibility, their commitment, productivity and morale increases and employers reap the benefits of lower turnover and training costs and higher retention rates.<sup>5</sup> Studies show that the costs of losing an employee, including advertising for, interviewing and training a replacement is often much greater than the cost of providing short-term leave to retain an existing worker. The average cost of turnover can range from 25 percent to 200 percent of an employee's total annual compensation.<sup>6</sup>

A third, related misconception is that expanded leave policies are too costly for taxpayers. In reality, these policies provide cost-savings to governments as well as to businesses. A recent study shows that if all workers had paid sick days, 1.3 million emergency room visits could be prevented each year in the United States, saving \$1.1 billion annually. More than half of these savings—\$517 million—would go to taxpayer-funded health insurance programs such as Medicare and the State Children's Health Insurance Program.<sup>7</sup> In addition, both women and men who take paid leave after a child's birth are significantly less likely to rely on public assistance or food stamps in the following year.<sup>8</sup> And women who take paid leave are more likely to be working 9 to 12 months after a child's birth and to have higher earnings.<sup>9</sup>

A final false assumption is that work-family policies are of concern to women only. However, with more and more women in the workforce, men are also increasingly managing responsibilities at home as well as in the workplace and seeking better ways to balance work and family responsibilities.

Mr. Chairman, strong majorities of people in the United States across the political spectrum support a national paid sick days law and believe that family and maternity leave is an important labor standard. Policies that would provide more flexibility and predictability to workers while recognizing the needs of business are overwhelmingly popular as well. These policies are commonsense solutions to the struggles that working- and middle-class families face, and policy innovations in these areas are long overdue.

That is why the National Partnership welcomes the opportunity to work with you and Congress on the Rebuild America Act. We want to commend you for leading this important conversation. The bill is a powerful package that America's working- and middle-class families urgently need. In addition to creating a national paid sick days standard, the Act would raise the minimum wage, protect overtime pay and workers' right to band together, as well as strengthen investments in child care assistance. The bill challenges the wrong-headed assumptions discussed above and recognizes that it is time to establish family friendly policies that reflect today's realities.

#### WORKERS AND THEIR FAMILIES NEED PAID SICK DAYS TO PROTECT THEIR HEALTH AND ECONOMIC SECURITY

The Rebuild America Act includes an important first step toward a more family friendly nation—the Healthy Families Act (S.984/H.R.1876). The Healthy Families Act creates a national paid sick days standard that would allow workers to earn up to seven paid sick days a year to recover from short-term illnesses, to care for a sick

<sup>5</sup>National Partnership for Women & Families. (2011, March). *Taking Care of Business: The Business Benefits of Paid Leave*. Retrieved 7 May 2012, from [http://www.nationalpartnership.org/site/DocServer/W\\_F\\_Taking\\_Care\\_of\\_Business\\_March\\_Update.pdf?docID=8721](http://www.nationalpartnership.org/site/DocServer/W_F_Taking_Care_of_Business_March_Update.pdf?docID=8721).

<sup>6</sup>Sasha Corporation. (2007). *Compilation of Turnover Cost Studies*. Retrieved 26 April 2012, from <http://www.sashacorp.com/turnframe.html>.

<sup>7</sup>Miller, K., Williams, C., & Yi, Y. (2011, October 31). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*. Institute for Women's Policy Research publication. Retrieved 21 November 2011, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>.

<sup>8</sup>Houser, L., & Varatanian, T. (2012, January). *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*. Rutgers Center for Women and Work Publication. Retrieved 26 April 2012, from <http://smlr.rutgers.edu/paymatters-cwwreport-january2012>.

<sup>9</sup>Ibid.

family member, to seek routine medical care or to seek assistance related to domestic violence, sexual assault or stalking. This proposed legislation is about guaranteeing that U.S. workers have access to one of the most basic components of a quality job.

The fact is that today, nearly 40 million workers across the country—about 40 percent of the private-sector workforce—have no paid sick days they can use when they get sick.<sup>10</sup> Millions more have no paid sick time they can use to care for a sick child, spouse or parent. Among the lowest wage workers, 8 in 10 lose income and risk job loss or workplace discipline when they are ill.<sup>11</sup>

When workers have no paid sick days, their families' economic security is jeopardized. An average worker without paid sick days who takes just 3.5 unpaid days away from work in a month compromises her family's ability to afford the month's groceries.<sup>12</sup> And that assumes the worker is lucky enough to keep her job. Nearly one-quarter of adults in the United States report that they have lost a job or been threatened with job loss for taking time off work to recover from an illness or care for a sick child.<sup>13</sup>

There is a direct relationship between parents having access to paid time off and the health of their children. Children get well faster when a parent cares for them. But in nearly two-thirds of families with children, all adults in the household work, and 53 percent of working mothers and 48 percent of working fathers don't have paid sick days to care for an ill child. Parents without paid sick days are five times more likely to take a child or other family member to an emergency room because they cannot take time off during work hours.<sup>14</sup>

In addition, as the baby boom generation ages, the 66 million people who serve as caregivers to older adults have an increasingly urgent need for paid sick days.<sup>15</sup> Workers without paid sick days that can be used for family care must choose between caring for a sick parent or spouse and keeping a job. And at a time when record numbers of workers are staying on the job well past traditional retirement age, older workers, in particular, need paid sick days to get the medical care they need to manage their own chronic conditions and other emerging health needs.

Providing paid sick days is cost-effective. "Presenteeism"—when employees come to work despite illness—costs our national economy \$160 billion annually in lost productivity, surpassing the cost of absenteeism.<sup>16</sup> Working people with paid sick days are more productive and less likely to leave their jobs, which saves businesses money by reducing turnover.

If we were to decide as a nation that providing paid sick days is a basic right similar to the minimum wage, an additional 30.3 million workers gain access to paid sick days under the proposal in the Rebuild America Act, bringing coverage to 90 percent of the private sector workforce.<sup>17</sup> Nearly half of the increased access to paid sick leave would accrue to female workers, who continue to be more likely than men to provide care to a sick child or family member.<sup>18</sup> This is what building economic opportunity for families should look like. And perhaps that is why the public strongly favors a law ensuring paid sick days. Three-quarters of the public supports a law guaranteeing all workers a minimum number of paid sick days, according to a 2010 survey conducted by the National Opinion Research Center at the University of Chi-

<sup>10</sup> U.S. Bureau of Labor Statistics. (2011, March). *Employee Benefits Survey Table 33. Leave benefits: Access, private industry workers, National Compensation Survey*. Retrieved 26 April 2012, from <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table21a.pdf>.

<sup>11</sup> Ibid.

<sup>12</sup> Gould, E., Filion, K., & Green, A. (2011, June 29). *The Need for Paid Sick Days: The lack of a federal policy further erodes family economic security*. Economic Policy Institute publication. Retrieved 12 August 2011, from <http://www.epi.org/page/-/BriefingPaper319.pdf?nocdn=1>.

<sup>13</sup> Smith, T. & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences* (unpublished calculation). National Opinion Research Center at the University of Chicago Publication. Retrieved 26 April 2012, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.

<sup>14</sup> Ibid.

<sup>15</sup> National Alliance for Caregiving. (2009, November). *Caregiving in the U.S. National Alliance for Caregiving and AARP Publication*. Retrieved 16 November 2011, from [http://www.caregiving.org/data/Caregiving\\_in\\_the\\_US\\_2009\\_full\\_report.pdf](http://www.caregiving.org/data/Caregiving_in_the_US_2009_full_report.pdf).

<sup>16</sup> Stewart, W., ET al. (2003, December). *Lost Productive Health Time Costs from Health Conditions in the United States: Results from the American Productivity Audit*. Journal of Occupational and Environmental Medicine, 45(12), 1234–46. Retrieved 22 November 2011, from [http://www.workhealth.org/whatsnew/whnewrap/Stewart%20etal\\_lost%20productive%20work%20time%20costs%20from%20health%20conditions%20in%20the%20US\\_%20results%20from%20the%20American%20Productivity%20Audit%202003.pdf](http://www.workhealth.org/whatsnew/whnewrap/Stewart%20etal_lost%20productive%20work%20time%20costs%20from%20health%20conditions%20in%20the%20US_%20results%20from%20the%20American%20Productivity%20Audit%202003.pdf).

<sup>17</sup> Joint Economic Committee of the U.S. Congress. (2010, March). *Expanding Access to Paid Sick Leave: The Impact of the Healthy Families Act on America's Workers*. Retrieved 7 May 2012, from [http://jec.senate.gov/public/index.cfm?a=Files.Serve&File\\_id=abf8aca7-6b94-4152-b720-2d8d04b81ed6](http://jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=abf8aca7-6b94-4152-b720-2d8d04b81ed6).

<sup>18</sup> Ibid.

cago. A full 86 percent favors a proposed law guaranteeing up to seven paid sick days annually.<sup>19</sup>

The good news is that there is momentum in the States to provide access to paid sick days. In 2011, Connecticut became the first State to adopt a paid sick days law, and Seattle became the fourth city, joining the trailblazing cities of San Francisco, Milwaukee and Washington, DC. Active campaigns and growing efforts are underway in many other States and cities across the country. The reality, though, is that we need a national standard. A working mother in Oregon and a working father in North Carolina should have the same right as workers in Connecticut to take a day away from work to care for a feverish child, a parent with a broken hip or to get the medical care they need to stay healthy.

#### PAID FAMILY AND MEDICAL LEAVE PROVIDES FAMILIES TIME TO CARE WITHOUT JEOPARDIZING THEIR FINANCIAL STABILITY

While providing paid sick days would help address the day-to-day health needs of families by guaranteeing paid, job-protected time off for common illnesses and short-term caregiving needs, we must also expand work-family policies to include wage replacement when workers must take time away from work to address their own serious health condition, care for a family member with a serious health condition, or care for a newborn or newly adopted child.

When such personal or family needs arise, workers frequently have no choice but to take unpaid leave or quit their jobs. As a result, for many workers, the birth of a child or an illness in the family creates a cycle of economic risk. Thirteen percent of families with a new baby become poor within a month.<sup>20</sup> Providing paid family and medical leave helps workers to perform essential caregiving responsibilities without risking their economic security.

Parents who are financially able to take leave are in a better position to give new babies the critical care they need in the early stages of life, laying a strong foundation for later development.<sup>21</sup> In addition, access to paid leave gives parents time to find the child care they will need in order to return successfully to work. Being forced to go back to work soon after a child's arrival only increases the odds of a child being placed in a poor or unstable child care setting, and this can negatively impact both children and their parents.

Adopting a paid leave standard is not just about caring for a new child. By 2050, there will be 88.5 million older adults—accounting for more than 20 percent of the U.S. population.<sup>22</sup> This means that even more workers will need time off work to care for aging family members. Today, approximately one-third of caregivers who provide eldercare end up leaving the workforce or reducing the number of hours they work—taking a financial toll on their current economic stability and impacting their long-term retirement security.<sup>23</sup> The average worker over 50 years of age who leaves the workforce to take care of a parent will lose more than \$300,000 in earnings and retirement income.<sup>24</sup> As a Nation, we can't afford to ignore the impending eldercare crisis.

Neither employers' policies nor public policies are on pace to meet the caregiving needs of working families. Only half of the workforce has access to job-protected *unpaid* leave under the FMLA; this leaves approximately 75 million workers without any protection under the law.<sup>25</sup> A meager 11 percent of workers in the United

<sup>19</sup> See note 13.

<sup>20</sup> Rynell, A. (2008, October). *Causes of Poverty: Findings from Recent Research*. The Heartland Alliance publication. Retrieved 7 May 2012, from <http://www.heartlandalliance.org/whatwedo/advocacy/reports/causes-of-poverty.pdf>.

<sup>21</sup> Skinner, C., & Ochshorn, S. (2012, April). *Paid Leave: Strengthening Families and Our Future*. National Center for Children in Poverty publication. Retrieved 7 May 2012, from [http://nccp.org/publications/pdf/text\\_1059.pdf](http://nccp.org/publications/pdf/text_1059.pdf).

<sup>22</sup> U.S. Census Bureau. (2011, March 23). *Older Americans Month: May 2011*. Retrieved 7 May 2012, from [http://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb11-jf08.html](http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-jf08.html).

<sup>23</sup> MetLife Mature Market Institute. (2011, June). *The MetLife Study of Caregiving Costs to Working Caregivers* (p. 10). MetLife Mature Market Institute Publication. Retrieved 11 October 2011, from <http://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf>.

<sup>24</sup> Ibid.

<sup>25</sup> Waldfogel, J. (2001, September). Family and Medical Leave: Evidence from the 2000 Surveys. *Monthly Labor Review*, 17–23. Retrieved 14 December 2011, from <http://www.bls.gov/opub/mlr/2001/09/art2full.pdf>. U.S. Department of Labor, Bureau of Labor Statistics. (2010). *Employment status of the civilian noninstitutional population by age, sex, and race (Table 3)*. Retrieved 27 June 2011, from <http://www.bls.gov/cps/cpsaat3.pdf> (Unpublished calculation).

States have access to paid family leave through their employers.<sup>26</sup> Among first-time mothers, only about 50 percent can cobble together any form of paid leave, whether sick or vacation days, disability insurance or something else—and that number has been stagnant for a decade. Among women with low levels of formal education, fewer than 20 percent have access to paid leave—and that number has not increased since 1961.<sup>27</sup> What's more, fewer than 40 percent of workers have access to short-term disability insurance through their employers; this disability coverage provides partial pay during a worker's medical leave.<sup>28</sup> Workers and their families need a national paid leave standard.

To better understand the need for—and the potential power of—a national paid leave policy solution, it is critical to look at the States. I would like to highlight the report the National Partnership released on Tuesday called *Expecting Better: A State-by-State Analysis of Laws That Help New Parents*. This is a comprehensive review of Federal and State laws that help expecting parents manage after a new child arrives. It also includes a special section that details State laws that help workers manage other family caregiving responsibilities.<sup>29</sup>

As our report explains, two States have created paid leave insurance systems. California created the Nation's first statewide paid family leave insurance program in 2002, and New Jersey followed in 2008. These programs were built upon those States' much older and well-established temporary disability insurance systems, which workers have been using for decades to take leave from work to address their own serious health conditions. We believe they provide a model for what a national commitment to paid family leave should look like.<sup>30</sup> Other States have expanded upon the Federal FMLA by making unpaid family and medical leave available to workers who are not covered by Federal law.

California's program demonstrates some of the benefits of paid leave. Women who use California's paid leave program are better able to arrange child care and to breastfeed their children for longer, both of which are associated with improved child well-being.<sup>31</sup> Men are more likely to take leave now, sharing more equally in caregiving responsibilities with women.<sup>32</sup> And California employers have been able to implement the program smoothly. About 60 percent have been able to coordinate their own benefits with the State program, which has likely led to cost savings.<sup>33</sup>

Unfortunately, too few States have adopted innovations that help working families meet their responsibilities at work and at home, and that is why national action is so critical and so timely. In our report, only two States, California and Connecticut, receive a grade of A-, the highest grade any State earned, for the policies they've put in place, and we've discussed both of those States' chief innovations here. A handful of States, including New Jersey, Oregon, Washington and Hawaii, get B's for policies that expand upon the Federal policy floor set by the FMLA, the 1978 Pregnancy Discrimination Act and the 2010 provision in the Affordable Care Act that guarantees many new mothers a place and break time to express breast milk after they return to work.

Some States have made small improvements in particular policy areas but overall have done very little to improve upon the Federal floor. For example, women in Iowa have greater access to pregnancy-related medical leave under State law than under Federal law because State law makes leave available to women in smaller businesses and with less time on the job than the Federal FMLA does, yet State

<sup>26</sup> See note 10.

<sup>27</sup> Laughlin, L. (2011, October). *Maternity Leave and Employment: Patterns of First-Time Mothers 1961–2008*. U.S. Census Bureau Publication. Retrieved 26 April 2012 from, <http://www.census.gov/prod/2011pubs/p70-128.pdf>.

<sup>28</sup> U.S. Bureau of Labor Statistics. (2011, March). *Employee Benefits Survey Table 17. Insurance benefits: Access, participation, and take-up rates, private industry workers, National Compensation Survey*. Retrieved 26 April 2012, from <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table12a.pdf>.

<sup>29</sup> National Partnership for Women & Families. (2012). *Expecting Better: A State-by-State Analysis of Laws That Help New Parents*. Retrieved 8 May 2012, from [www.nationalpartnership.org/ExpectingBetter](http://www.nationalpartnership.org/ExpectingBetter).

<sup>30</sup> For more information about paid leave programs and research in support of paid leave, see National Partnership for Women & Families. (2012). *Securing Financial Stability & Good Health for Working Families: A Briefing Book on Paid Family and Medical Leave*. Retrieved 7 May 2012, from [http://www.nationalpartnership.org/site/DocServer/Paid\\_Leave\\_Briefing\\_Book\\_FINAL.pdf?docID=10161](http://www.nationalpartnership.org/site/DocServer/Paid_Leave_Briefing_Book_FINAL.pdf?docID=10161).

<sup>31</sup> Appelbaum, E., & Milkman, R. (2011). *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*. Center for Economic and Public Research Publication. Retrieved 26 April 2012, from <http://www.cepr.net/documents/publications/paid-familyleave-1-2011.pdf>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

law provides for a shorter maximum period of leave (8 weeks maximum, compared to 12 weeks under the FMLA). Pennsylvania provides longer periods of leave to its own State employees but has not adopted laws that expand access to private-sector workers.

Other States—18 of them, in fact, including Georgia, North Carolina, Utah and Wyoming—receive a grade of F for failing to enact any State laws or policies that help private-sector workers or even State employees better manage their work-family needs when a new child arrives.

We at the National Partnership are convinced that failing to provide paid leave is shortsighted, self-defeating, and a mistake that costs families, businesses and our Nation dearly. We urge you to seriously consider paid leave as a policy change that protects the short- and long-term economic security of families, helps businesses and our economy, and saves taxpayer dollars.

#### WORKPLACE FLEXIBILITY MUST MEET THE NEEDS OF WORKERS AND EMPLOYERS

Beyond providing paid sick days and paid family leave, we must also look to expand workplace flexibility in a meaningful way. This is important because, in the face of an extremely tight labor market, workers are being asked to be more flexible to help meet business needs. The National Partnership and Family Values @Work convened a series of discussion groups in Dallas, Atlanta, Los Angeles and New York City and conducted in-depth interviews with workers in the Midwest in 2010 and 2011. These discussions illuminated key challenges that workers across industries and wage levels face. Of particular note, the lower-wage workers we spoke with identified scheduling demands—being required to work unpredictable and constantly changing shifts, and having to work overtime with little or no notice—as key sources of conflict between their responsibilities at work and at home.<sup>34</sup>

Recent empirical research confirms that “flexibility” can too often take forms that hurt, rather than help, workers and their families.<sup>35</sup> For example, workers, and particularly low-wage workers, are too often asked to work unpredictable hours—either more hours than they want through mandatory overtime, or too few hours, which prevents them from affording basic expenses. “Flexibility” too often also means that workers have little or no advance notice of their work schedules on a given day or in a given week. The increase in “just-in-time” scheduling, where a worker only finds out just before a shift whether he or she will be needed that day, means that we have a growing army of underemployed people who are sitting at home just waiting to work and uncertain whether they will have earned any money at the end of the day. “Flexibility” for an employer in planning shifts may also lead to rigid schedules for workers, who are told to report for certain hours without the ability to even slightly vary starting and ending times.

Scheduling practices that provide little advance notice or control to workers create significant practical challenges that are often costly and prevent workers and their families from thriving. Workers who do not know their schedules or shift lengths in advance cannot easily find affordable, high-quality child care; they must either pay for child care they may not use or cobble together last-minute arrangements with family, friends or babysitters. Unpredictable schedules also mean that workers face practical challenges in getting to their jobs because public transportation schedules may not accommodate their work hours; workers who are “on call” may even take a costly bus or car ride across town to get to work, only to find that their shifts have been canceled. Scheduling practices and rigid shift schedules also create barriers to seeking the education and training that can lead to better and more lucrative employment that provides greater financial security down the road.

A growing number of employers and the Administration have recognized that workplace flexibility is a 21st century imperative. The Council of Economic Advisers found that, as more businesses adopt flexibility practices, the benefits to society, in the form of reduced traffic, improved employment outcomes and more efficient allo-

<sup>34</sup> National Partnership for Women & Families and Family Values at Work. (2011, February). *Los Angeles Workers Speak: The Employee Case for Flexibility in Hourly, Lower-Wage Jobs*. Retrieved 7 May 2012, from [http://www.nationalpartnership.org/site/DocServer/W\\_F\\_Workflex\\_LA\\_Workers\\_Voice.pdf?docID=8241](http://www.nationalpartnership.org/site/DocServer/W_F_Workflex_LA_Workers_Voice.pdf?docID=8241).

<sup>35</sup> Watson, L., & Swanberg, J. (2011, May). *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation*. Workplace Flexibility 2010 and Institute for Workplace Innovation (iwin) publication. Retrieved 7 May 2012, from <http://www.uky.edu/Centers/iwin/LWPolyFinal.pdf>.

cation of employees to employers, may be greater than the gains to individual businesses and employees.<sup>36</sup>

Senator Casey's legislation, the Working Families Flexibility Act, is a good first step that offers some procedural protections to workers who seek flexibility. It puts in place a process for workers to request a temporary or permanent change in their work schedules, such as the number of hours the worker is required to be on the job, the times when the worker is required to be on the job or on notice, the place the worker is required to work, and notice of schedule assignments. This legislation provides workers with job protection when making the request.

We must be certain, however, that policy solutions addressing workplace flexibility work for both employers and employees. Giving employees a greater voice in the workplace, as the Rebuild America Act proposes, is critically important. We firmly believe that collective bargaining provides one of the most effective ways to create a process of meaningful flexibility in the workplace. Laws providing employees the ability to leave work for short periods of time during the workday to attend school meetings are also critically important; some States have taken the lead on this and we urge Federal lawmakers to follow.

#### THE FMLA MUST BE EXPANDED

Finally, we would also ask you to consider several ways to expand the Family and Medical Leave Act. Such expansions are necessary to allow more workers to access protections afforded by the law and to recognize the diversity in our Nation's families. For example, we should expand the definition of "family member" to allow workers FMLA leave to care for a domestic partner, parent-in-law, adult child, sibling, grandchild or grandparent. We should allow workers to use FMLA leave to address domestic violence, sexual assault or stalking and their effects. Furthermore, in order to deal with one of the most devastating life experiences, we should amend the FMLA to entitle an eligible worker to up to 12 weeks of leave to grieve the death of a son or daughter. And last but not least, we should amend the FMLA to cover businesses with 25 or more employees—currently the FMLA applies to employers with 50 or more employees—and to allow part-time employees to become eligible once they have been on the job for at least 12 months. This is critical in today's economy, given that millions of Americans are underemployed or relegated to part-time jobs while seeking full-time employment. Enacting these changes to the FMLA would provide much-needed relief to the millions of workers currently ineligible for the leave it provides.

#### CONCLUSION

Working families in our country need and want family friendly policies that promote their economic security. Some States and cities have already taken the lead on this, and the time has come for Federal action as well. Proposals like the Healthy Families Act, the Rebuild America Act, paid family and medical leave insurance programs, access to child care, expanded access to the FMLA, and increased workplace flexibility would make a tremendous difference to the health and well-being of our Nation's workers and their families.

But perhaps just as important, adopting these policies will help strengthen the middle class, promote economic security for all families regardless of income, and rebuild our economy. These policies are about renewing the American dream for millions of workers who play by the rules and deserve a fair shot.

Chairman Harkin and members of the committee, we thank you for the opportunity to participate in this important discussion. At the National Partnership for Women & Families, we look forward to working with you to make these policies a reality.

The CHAIRMAN. Thank you very much, Ms. Lichtman.

Now we will turn to Kimberly Ortiz. Kimberly, welcome and please proceed.

#### STATEMENT OF KIMBERLY ORTIZ, RETAIL WORKER, BRONX, NY

Ms. ORTIZ. Good morning and thank you all very much for inviting me to speak on this important hearing in honor of Mother's

<sup>36</sup>Executive Office of the President Council of Economic Advisors. (2010, March). *Work-Life Balance and the Economics of Workplace Flexibility*. Retrieved 7 May 2012, from <http://www.whitehouse.gov/files/documents/100331-cea-economics-workplace-flexibility.pdf>.

Day. I am grateful for your dedication to these issues and for the opportunity to let you know how they have personally impacted me and my family.

My name is Kimberly Ortiz, and I am a single mother of two boys. We live in the Bronx, which is the poorest urban County in New York City where nearly three in five Hispanic single mothers, like myself, live in poverty. My son Aiden is almost 6 years old and my son Ethan is 4 years old. They are beautiful boys who, unfortunately, are both on the autism spectrum and require special needs.

Most of my jobs have been in retail and have been low wage. Starting at 16-years-old, I worked full-time, mostly earning less than \$10 an hour. I stayed at the same jobs for years at a time, receiving promotions, but no raises to a livable standard. I learned very young that I was poor and have felt what poverty is like for most of my life.

Growing up as a kid, I remember times when we had no Thanksgiving dinners, or Con Edison would come and cutoff the lights, and I do not remember a time where we did not rely on food stamps. Now, as a mother myself working full-time I, unfortunately, also have to rely on food stamps and Medicaid because my earnings are simply not enough.

I worked at the Statue of Liberty for almost 5 years, and even with the title of assistant manager, was only making \$9.25 catering to New York City's large tourist economy where approximately 4 million people visit each year at \$20 a ticket. Despite the steady flow of tourists to the Statue, I was only notified of my schedule 3 to 4 days ahead of time. I was supposed to receive my schedule about a week in advance, which is not much, but it never happened. Still, I was eager to work hard and I volunteered my time as much as I could. I would come in early, offered to stay late, whatever was needed to get the job done.

Toward the end of my time at the Statue, I gave birth to my first son Aiden. I literally did not buy anything for about a month and a half because I had to take that time off, because they did not offer any maternity leave or anything like that, and I was on survival mode. I bought nothing extra except for what my sons needed, and I had to borrow money here and there from my very poor family, literally \$20 here and there.

Once Aiden was born, my manager's attitude completely changed toward me. I still wanted to work full-time, but I needed hours that were conducive to family life now. So because I could not come in at 5:30 a.m. anymore, they cut me from 45 hours a week to about 15, even though I had seniority, was available for more hours, and desperately needed them. My managers were not flexible with me even though I had been extremely flexible with them.

I worked everywhere in the Statue, from the kitchen, to the gift shop, to inside the Statue, and the audio tours. I thought that the years of hard work I provided would come into consideration. Unfortunately, I was wrong. My managers started calling me unreliable, and if an emergency popped up, and they will with newborns, I was penalized.

One time, my son got really sick with a double ear infection, and I had to take 4 days off work to care for him. I called my manager from the emergency room to let her know what was going on, and

she said she did not know if I would be penalized, if there would be any repercussions for this time off. I submitted notes from the doctor, but was still disciplined. These 4 days were unpaid, so once again, I had to borrow money from friends and family members.

Healthcare became a huge stress in my life. The Statue of Liberty offered benefits, but they were very expensive. I made about \$260 a week and \$45 went toward this healthcare that they provided. But I realized that the co-payments were also about \$40, even if I did not need to see a doctor. I discontinued that coverage and was forced to rely on free clinics, since I did not qualify for Medicaid. Somehow, \$260 a week for a family of two was too much to be eligible for Medicaid. We would experience 6-hour waits at the free clinics, and each visit was an all-day affair. It was a double-edged sword: I had to go to the doctor, but yet, I had to take the pay cut.

I sadly realized that the years of loyalty and hard work meant nothing. It was ironic that I worked at the Statue of Liberty, the symbol of freedom and liberty, yet I had a full-time, managerial job and I still could not provide for my family.

Because of low wages, scheduling issues, and lack of paid time off that I have experienced as a working mother, I joined an organization of retail workers dedicated to improving the standards and opportunities in the industry called the Retail Action Project.

This past fall, I was part of a team that surveyed 500 retail workers in five boroughs of New York City. Went to dozens of stores and spoke to plenty of workers, and what I heard was exactly what I had been experiencing. Workers told me about the erratic, just-in-time scheduling and many people I spoke to were not put on a regular schedule and had call-in shifts where you need to call-in 2 hours prior to the time you are scheduled to see if they need you.

As a mom, I need to know when I am working so I can properly set up healthcare. It was hard enough to do that with 3 days' notice; I cannot imagine doing it with 2 hours' notice. I love to work, I love being a mom, but I need a clear, consistent schedule and reasonable work hours that would allow me to still be active and engaged in my children's lives so I will not have to borrow money when I take a day off from work or have to go to the doctor.

I have been fighting to join the middle class for years. I do what I have to do to survive and invest in my family's future, working full-time, studying toward a college degree in social work while being a good mother to my sons. As a single mother, I need to be present for Aiden and Ethan, and provide for them. This is what middle class means to me.

Thank you for your time.

[The prepared statement of Ms. Ortiz follows:]

#### PREPARED STATEMENT OF KIMBERLY ORTIZ

Good morning, and thank you all very much for inviting me to speak on this important hearing in honor of Mother's Day. I am grateful for your dedication to these issues, and for the opportunity to let you know how they have personally impacted my family.

My name is Kimberly Ortiz, and I'm a single mother of two boys. We live in the Bronx, which is the poorest urban county in the Nation in New York City—where nearly three in five Hispanic single mothers like me live in poverty. My son Aidan is almost 6 years old, and my son Ethan is 4 years old. They are beautiful boys who

are both on the autism spectrum, and require special needs. Most of my jobs have been in retail, and have been low-wage. Starting at 16 years old, I worked full time, mostly earning less than \$10/hr. I've stayed at the same jobs for years at a time, receiving promotions, but no raises to a livable standard. I learned I was poor at a very young age and have felt what poverty is like for most of my life. Growing up as a kid, we had no Thanksgiving dinners, Con Edison would cutoff our lights, and I don't remember a time that we didn't rely on food stamps to get by. Now, as a mother myself working full-time, I still have to rely on food stamps and Medicaid because my earnings are simply not enough.

I worked at the Statue of Liberty for almost 5 years, and even with the title of "Assistant Manager", I was only making \$9.25 an hour at the gift shop, catering to New York City's large tourist economy, where approximately 4 million people visit each year, at \$20 per ticket. Despite the steady flow of tourists to the Statue and their steady hours of operation, I was only notified of my weekly schedule 3–4 days ahead of time. I was supposed to receive my schedule 1 week in advance—which isn't much—but that never happened. Still, I was eager to work hard—I often volunteered to come in early or stay late—whatever was needed to get the job done. Toward the end of my time at the Statue, I gave birth to my first son Aidan—and took a month and a half off without pay, because that job didn't offer any paid time off. I literally didn't buy anything extra leading up to his birth in order to save, and was in complete survival mode as my mother helped as much as she could, and my father helped out with his unemployment, but this literally meant \$20 loans here and there.

Once Aidan was born, my manager's attitude completely changed toward me. I still wanted to work full-time, but I needed hours that were conducive to family life. So, because I couldn't come in at 5:30 a.m. anymore, they cut me from 40–45 hours per week to 15–20, even though I had seniority, was available for more hours, and desperately needed them. My managers were not flexible with my hours, even though I had been extremely flexible for them. I had worked everywhere at the Statue: in the kitchen, the concession stand, gift shop, and audio tours—and I thought that the years of hard work I provided would come into consideration. I was wrong. Managers started calling me unreliable, and if any emergency popped up (as is typical with any newborn), I was given a hard time. One time, my son got really sick with a double ear infection, and I had to take 4 days off. My manager told me she couldn't guarantee there would be no repercussions for this unexpected time off when I called her from the hospital emergency room with my sick son. And sure enough, when I returned to work I was written up and "cautioned." I submitted notes from the doctor, but I was still disciplined. These 4 days were all unpaid, so I borrowed money from friends, family, and neighbors for essentials like diapers and food. As long as my sons and I have those basic necessities, I know how to make do with nothing else.

Health care became a huge stress in my life. The Statue of Liberty offered benefits, but they cost \$45 per week for my son and I. At first, I paid for the coverage from my weekly paycheck of \$260 per week, but realized the co-pays for any appointment were also \$40, and I simply couldn't afford it any longer. I discontinued that coverage, and was forced to rely on free clinics since I didn't qualify for Medicaid. Somehow \$260 per week for a family of two was too much income to be eligible for Medicaid. We'd experience 6 hour waits at the free health clinics, and each visit was an all day affair—which took away further time from work. It was a double-edged sword: I had to go to the doctor because we had no choice, so I had to bite the bullet and take the cut on my paycheck. Eventually, I sadly realized that the loyalty and years of work meant nothing. It was ironic that I worked at the symbol of freedom and liberty for our country, yet, at that full-time managerial job, I still couldn't provide my family with the basics we needed to live in our city.

I'm thankful that my mother is available to assist with childcare, and I pay her out of my paychecks on a weekly basis. But because the Statue of Liberty gave me such little advance notice of my schedule, it's very difficult to let my mother and cousin know when I need them to be available. And because my children have special needs, it was not easy to find adequate caregivers. If my mother is unavailable when I've been scheduled for work, I rely on my cousin. If they are both unavailable, I need to call out from my job. It's very helpful to be on Medicaid now, due to my sons' diagnosis and having a temporary job, but our eligibility is always being re-evaluated and I can't rely on it forever.

Because of the low wages, scheduling issues, and lack of paid time off that I've experienced as a working mother, I joined an organization of retail workers dedicated to improving the standards and opportunities in the industry, called the Retail Action Project. This past fall, I was part of a team that surveyed 500 retail workers in all five boroughs of New York City. I went to dozens of stores and spoke to sales,

stock, and cashier workers about their wages, schedules, and paid sick days. And what I heard was exactly what I'd been experiencing! We found that women of color in retail are paid less, are less likely to be promoted, and often don't receive benefits like health care or paid sick days through their employer. Workers told me about their erratic "just in time" schedules, and many people I spoke with weren't put on the regular schedule, but had "call-in" shifts where they were required to call in to their jobs 2 hours before their shift to see if the store needed them. People are expected to reserve their availability on these "call-in" days, because their employer may need them. As a mom, I need to know when I'm working to properly set up childcare. It was hard enough with 3 days' notice, so I can't even imagine 2 hours notice! Out of all the workers surveyed, less than a quarter had ever taken a paid sick day, and only 17 percent had a set schedule. These stories and numbers really echoed what I had been through.

I love to work and I love being a mom, but I need a clear, consistent schedule and reasonable work hours that would allow me to still be an active, engaged parent in my children's lives. I am more than willing to work hard. I want to work full time, and I should be paid a living wage, and have a few paid sick days for myself or my sons—so I won't have to borrow money for food and diapers when I take a day off work to take my son to the ER. I've been fighting to join the middle class for years, I do what I have to do to survive and invest in my family's future—working full-time, studying towards a college degree in social work while being a good mother to my sons. But working without some basics, I won't be able to get there. A few paid sick days a year, a set schedule, and wages that keep up with the rising cost of living would make a tremendous difference in my family's life. As a single mother, I need to be present for Ethan and Aiden, *and* provide for them. This is what middle class means to me. Thank you very much for your time.

The CHAIRMAN. Well, thank you, Ms. Ortiz, for a very poignant, powerful presentation. It is nice to hear what real life is like once in a while around this place.

Ms. Phillips.

**STATEMENT OF JUANITA PHILLIPS, DIRECTOR OF HUMAN RESOURCES, INTUITIVE RESEARCH AND TECHNOLOGY CORP., HUNTSVILLE, AL; ON BEHALF OF THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT (SHRM), ALEXANDRIA, VA**

Ms. PHILLIPS. Good morning, Chairman Harkin, Ranking Member Enzi, and distinguished Senators.

My name is Juanita Phillips and I am director of human resources at Intuitive Research and Technology Corporation; we just go by INTUITIVE. Thank you for this opportunity.

On a personal note, I am a mother of two, and have two granddaughters, three of the members of my HR team are also young mothers, so we are all excited about Mother's Day this weekend.

I appear before you today on behalf of the Society for Human Resource Management or SHRM. SHRM is engaged in a significant effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces, which has included their partnership with the Families and Work Institute, one of the key elements of which is the When Work Works Initiative. In addition, SHRM co-chairs the National Coalition to Protect Family Leave, which is a broad-based group dedicated to protecting the integrity of the Family and Medical Leave Act.

My organization, INTUITIVE, has 243 employees. As a relatively small, flexible employer, we can be creative in providing employee benefits and programs. These practices have helped us achieve a 92 percent retention rate and earned us a lot of recognition. We were named the No. 2 "Best Small Company to Work For in the U.S." in 2011 by the Great Place to Work Institute, and ranked No. 2 in the "Best for Vets Award" given by the Military Times EDGE mag-

azine for 2012. We also appeared in AARP's "Top 50 Employers in the U.S. for Workers Over 50" 3 years in a row.

These awards, along with many others, are evidence of the success of the programs and overall approaches we take in helping our people manage their home and work responsibilities.

Some of the components of INTUITIVE's approach to fostering such an effective and flexible workplace include: first, we offer flexible work hours. Our full-time exempt employees work 80 non-prescribed hours during a 2-week pay period, providing them flexibility for appointments, school activities and other events. And our employees work a variety of arrangements. Previously retired employees find our flexible scheduling particularly attractive. In fact, 25 percent of our employees are actually retired from somewhere else.

We also give generous paid time off, or PTO, which is the combination of vacation and sick leave. The PTO approach treats employees as adults. They manage their time off accrual, however they wish, without keeping track of multiple banks of leave or needing excuses to give us to satisfy requirements for certain types of leave.

Then there are our parental leave benefits. Our short-term disability, which is available to all full-time employees at no-cost provides 70 percent of regular pay for up to 11 weeks for new moms. We bonus with PTO as well and employees have chosen to use the paid benefits that INTUITIVE provides rather than electing to use unpaid FMLA.

We have a very robust veteran's information program, or VIP we call it, that includes providing up to 3 days off with pay per year for VA hospital appointments, or for a family member's mid-tour return visit. And we love calling our vets VIP's.

Mr. Chairman, all these practices are voluntary. INTUITIVE offers these benefits because they work for our employees, and they help us attract and retain the best. We are an example of why SHRM has strong concern with a one-size-fits-all mandate contained in Senate 984, the Healthy Families Act.

First, the qualifying events in the bill are ill-defined. We anticipate that employers and employees will have the same types of difficulties as they do with the administering of intermittent FMLA leave.

Second, the Healthy Families Act would force employers to comply with yet another statute in the already complex web of inconsistent leave obligations.

Third, the Healthy Families Act would disrupt current employer paid leave practices. It would require all covered employers to amend or drop existing leave policies in order to comply.

Fourth, employers would have to cutback or eliminate other employee benefits such as health or retirement benefits, or forego wage increases, or in our case, decrease profit sharing. Many employees may prefer higher wages or other benefits over receiving additional paid sick leave.

It has been argued that generous employers like mine, INTUITIVE, should welcome the Healthy Families Act because it would level the playing field, but that misses the point. We give generous paid leave so we can be an employer of choice. What we do not

want is a government-imposed paid leave mandate to take away our competitive edge.

While SHRM has serious concerns about the Healthy Families Act, both SHRM and its members believe the United States must have a 21st century workplace flexibility policy that meets the needs of both employees and employers.

SHRM has developed five principles to help guide the creation of a new workplace flexibility statute. In short, we believe in return for meeting a minimum requirement, employers who choose to provide paid leave should qualify for a statutorily defined safe harbor. If Congress wants to compel employers to offer paid leave, we do not believe it should punish the employers that already do.

Mr. Chairman, SHRM remains committed to working with the committee to help ensure employees have more access to leave.

Thank you.

[The prepared statement of Ms. Phillips follows:]

#### PREPARED STATEMENT OF JUANITA PHILLIPS

##### INTRODUCTION

Good morning Chairman Harkin, Ranking Member Enzi, and distinguished Senators. My name is Juanita Phillips, and I am director of Human Resources at Intuitive Research and Technology Corporation (*INTUITIVE*) at our company headquarters in Huntsville, AL. I am pleased to appear before you today on behalf of the Society for Human Resource Management (SHRM), of which I have been a member for nearly 20 years. I am also a member of the north Alabama SHRM chapter and the Alabama SHRM State Council. Thank you for this opportunity to testify before the committee on workplace flexibility issues.

By way of introduction, I have over 24 years of experience as an HR professional at a publishing company, an engine manufacturing company and several Federal Government contractors. I've managed HR in both collective bargaining and non-unionized environments.

SHRM is the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SHRM co-chairs the National Coalition to Protect Family Leave, which is a broad-based group of organizations, companies and associations dedicated to protecting the integrity of the Family and Medical Leave Act of 1993. The Coalition supports public policy that promotes voluntary, employer-provided leave benefits to maximize flexibility for both employers and employees.

In addition to advocating for a new approach to workplace flexibility public policy, SHRM has also engaged in a significant effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces. In February 2011, SHRM formed a multi-year partnership with the Families and Work Institute (FWI), the preeminent work-family think tank known for rigorous research on workplace flexibility issues. One of the key elements of the SHRM/FWI partnership is called the *When Work Works* program, a nationwide initiative that intends to promote workplace flexibility through research and local partnerships. Additional information about the SHRM/FWI partnership is offered toward the conclusion of my testimony.

My organization, *INTUITIVE*, is an engineering and analytical services firm begun in 1999 with one contract and two employees. Our two owners, located next door and down the hall from me, are very active workers in the company. We have 243 employees; all but about a dozen work within Alabama. It is not easy to get a job with *INTUITIVE*; we put a great deal of effort into our hiring processes. We are not hiring a person for a specific job but are choosing someone to be part of our company. We then put a great deal of thought and planning into how we will keep those people and are very proud of our 92 percent retention rate. Each full-time employee has a written plan of what he or she would like to accomplish professionally, and I touch base with each manager quarterly to talk about progress toward those plans. In the 13 years we have been in business, we have not laid off anyone due

to lack of work. We are 26 percent veterans, 16 percent disabled, 25 percent retired from elsewhere, and 10 percent co-ops, interns and student hires.

In today's economy, organizations must compete in the global market for skilled, dedicated employees, while managing their labor costs and expenses to remain competitive. HR professionals and employers must also address how to manage their business when faced with challenges such as employee absences due to illness, injury, military deployment or other circumstances. These situations, if not managed correctly, can lead to added workload for colleagues, as well as low employee productivity and low morale. Flexible work arrangements can often help employers meet the needs of their employees under these circumstances, but the same approach will not work for all positions and employees.

In my testimony, I will share with you some of the workplace flexibility practices at my company, reveal recent SHRM research on employer-provided benefits, describe the merits and challenges inherent in the Family and Medical Leave Act (FMLA) and proposed Healthy Families Act, discuss SHRM's effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces, and offer SHRM's workplace flexibility policy recommendations to Congress.

#### WORKPLACE FLEXIBILITY PRACTICES AT INTUITIVE

Being a small company of 243 employees, *INTUITIVE* is able to be creative in providing employee benefits and programs. These practices have helped us achieve a 92 percent retention rate and have earned us recognition by several organizations. We were named the No. 2 Best Small Company to Work for in the United States in 2011 by the Great Place to Work Institute (two-third of scoring based on anonymous on-line employee surveys),<sup>1</sup> and ranked No. 2 in the Best for Vets Award given by the *Military Times/Edge* magazine for 2012.<sup>2</sup>

In 2011, *INTUITIVE* was the only company in north Alabama to be recognized for the fourth year in a row as one of the Best Places to Work in Huntsville (entirely based on anonymous on-line employee surveys) by the Huntsville/Madison County Chamber of Commerce, the North Alabama Society for Human Resource Management and the National Children's Advocacy Center. We also won the Family Friendly Award for Huntsville, and we have appeared in AARP's Top 50 Employers in the U.S. for Workers over 50 for the last 3 years in a row. These awards are evidence of the programs and overall approaches we take at *INTUITIVE* in helping our people manage their home and work responsibilities.

Having the ability to design our workplace policies and practices in ways that support our mission and values, and that develop and fulfill our employees, is critical to us. Organizations like ours want to be able to continue to manage our workplace in ways that work for our company culture and help us meet our business objectives. It is of utmost importance to us to inspire and engage our employees. Our 92 percent retention rate, and a greater than 1,330 percent increase in the number of individuals applying for positions in the last few years, both can be greatly attributed to our employees feeling that their work is more than just a job. In fact, the "wall words" on the wall in the HR department state: *"Nothing sells our company like the stories of engaged workers who take pride in where they work."*

Here are some of the components of *INTUITIVE*'s approach to being an effective and flexible workplace:

**Flexibility**—One of the key components for helping employees meet their work and life obligations is being able to offer flexible work hours. Because we serve many customers that have differing approaches to work hours, we are generally able to match up candidates and employees with the type of flexibility they need. This can sometimes even be done on a temporary basis, when an employee has such a need. We have full-time and part-time positions, and a "provisional" category. This is a category for those who don't fit the other two—such as those who work full-time for periods of time and then part-time for periods of time; those who work on a couple of projects per year and don't work in between; those whose hours are sporadic; and our co-ops, interns, and student hires. Our full-time exempt employees work 80 non-prescribed hours during the 2-week pay period, providing them with flexibility for appointments, school activities, and other events. We also have employees who have compressed work weeks, some who telecommute, and we also offer

<sup>1</sup> Great Place to Work Institute (2011). Great Place to Work Rankings: 2011 Best Small & Medium Workplaces. <http://www.greatplacetowork.com/best-companies/2011-the-great-place-to-work-rankings-the-best-small-a-medium-workplaces-presented-by-entrepreneur-/678>.

<sup>2</sup> Military Times EDGE (2012). Best for Vets 2012: Employers. <http://www.militarytimesedge.com/projects/best-for-veterans/best-employers-for-veterans/2012/>.

job sharing and phased retirement. Employees can better meet their work and life needs when flexible options are available.

While we provide a flexible workplace for all employees, our flexible work schedule is especially attractive to retirees. We have many employees who have previously retired, but come to work for us because they have the skills we need to support specific customers. Our structure allows us to be able to provide the flexibility they often want. In fact, 25 percent of our employees are retired from elsewhere, and 8 percent are using our phased retirement approach. Overall, 30 percent of our workforce has flexible start and stop times; 10 percent have a compressed work week; and 4 percent work from home. We believe all these practices contribute to our ability to attract, hire, and retain the best talent.

**PTO**—*INTUITIVE* offers employees Paid Time Off (PTO) leave, which is a combination of vacation and sick leave. The amount of PTO we offer to our employees is above the average in our area, per Chamber of Commerce sponsored wage and benefit surveys. New employees receive 15 PTO days per year, accrued per pay period and available for use immediately, and employees reach 20 days of PTO at 3 years of service. The PTO approach to providing leave is consistent with treating employees as adults; they manage their time-off accruals however they wish without keeping track of multiple banks of leave or needing excuses to satisfy requirements for certain types of leave. Additionally, there are no issues over whether sick leave covers caring for a child or a relative, or the employee's own illness. PTO can be used for any reason and no documentation is required by the employee. Along with our monetary bonus programs, we also have the option of giving employees additional PTO, especially those employees with circumstances where they may appreciate additional PTO days more than money. Overall, providing our employees PTO leave instead of separate vacation and sick leave contributes positively to our professional environment.

**Holidays**—Another way we provide flexibility to our employees is that *INTUITIVE* makes all 10 of our holidays floatable. If employees prefer to work any particular holiday, they may do so as long as their workplace is open that day and they have supervisory approval. All earned holidays simply must be used before the end of the calendar year. This approach is valuable to an employee in that it provides them with flexibility for scheduling time off, and for making their holidays coincide or alternate with a working spouse's holidays, depending on their needs.

**Veterans Programs and VIP Leave**—I mentioned that *INTUITIVE* was named the No. 2 Best for Vets Award winner among employers, according to *Military Times/Edge Magazine* this year. *INTUITIVE* has a very active veterans network within the company, and a very robust veterans program, including each new-hire vet getting to meet our VIP (Veterans Information Program) Contact Coordinator on his or her first day and then being connected to a veteran within the company through a mentoring program. We have a VIP site on our employee intranet portal, which is dedicated entirely to information and resources for our veterans. One component of our VIP Program is VIP Leave, which provides up to 3 days off with pay per year for appointments at a VA hospital or for a family member's mid-tour return visit. Additionally, activated reservists are given the difference between their military pay and their civilian pay for up to 6 months. And we love calling our vets "VIPs."

**Elder Care Benefit**—We see employees who are also caregivers becoming more common. Some of our employees are not only taking care of children, but are also taking care of elderly loved ones. We are proud to have an elder care benefit that provides each employee with a free, annual, 45-minute consultation with experts in the field of elder care, and provides discounts on further services. This benefit also includes four "Lunch 'n' Learn" seminars annually on various elder care topics, which a spouse or family member may also attend. A Lunch 'n' Learn session is also provided for managers on the topic of supervising caregivers. The information shared is excellent, the resources are much appreciated, and it is a program that further assists employees with meeting their personal and work needs.

**Parental Leave and Disability Insurance**—Our short-term disability, which is available to all full-time employees at no cost and available for purchase by non-full-time employees, provides 70 percent of regular pay for up to 11 weeks for new mothers. When fathers in our company plan to take time off for a birth or adoption, they generally have saved enough leave for the event. When they are short, we find a performance event for which to provide them a bonus of additional PTO. We also provide an Adoption Benefit, which is financial assistance awarded upon completion of a successful adoption in which neither adopting parent is the biological parent. Due to our generous short-term disability policy and bonus practices, employees have generally chosen to use those benefits rather than electing to use FMLA in the 13-year life of our company. In addition to the short-term disability described

above, the company provides long-term disability to all full-time employees, and makes it available for purchase to non-full-time employees.

Mr. Chairman, at its core, workplace flexibility is about improving business results by giving people more control over their work time and schedules. Traditionally, “work flex” meant variable hours. Today, when we say work flex, we are talking about an effective workplace where realistic work patterns meet the needs of both employers and employees.

All of these practices I described are voluntary. We are not required to offer these benefits at *INTUITIVE*, but we do because they work well for our employees and help us attract and retain the best people. However, if *INTUITIVE*’s benefits were forced onto another employer in Huntsville, or across the State or the country, these benefits might not work as well in meeting the business needs of their organizations and the personal needs of their employees. For flexible workplaces to be effective, they have to work for both the employee and the employer. What works at one organization may not be appropriate for another organization’s culture, business structure or industry.

#### SHRM RESEARCH

On April 30, 2012, SHRM and the Families and Work Institute (FWI) jointly released the 2012 *National Study of Employers*.<sup>3</sup> First conducted by FWI in 1998, the National Study of Employers is the most comprehensive and far-reaching study of the practices, policies, programs and benefits provided by U.S. employers to address the changing needs of today’s workforce and workplace, including workplace flexibility, health care and economic security benefits, care-giving leave and elder care assistance.

This survey found that employers are increasing employees’ options for managing when and where they work, while reducing some options that affect how much they work. For example, significantly more employers are allowing at least some employees to:

- use flex time and periodically change starting and quitting times within some range of hours (66 percent in 2005 to 77 percent in 2012);
- take time off during the workday to attend to important family or personal needs without loss of pay (77 percent in 2005 to 87 percent in 2012);
- work some of their regular paid hours at home on an occasional basis (34 percent in 2005 to 63 percent in 2012); and

At the same time, opportunities to work a reduced schedule or take extended leaves away from work have declined. Significant decreases were found in employers allowing at least some of their employees to:

- return to work gradually after childbirth or adoption (86 percent in 2005 to 73 percent in 2012),
- take a career break for personal or family responsibilities (73 percent in 2005 to 52 percent in 2012), and
- move from full-time to part-time work and back again while remaining in the same position or level (54 percent in 2005 to 41 percent in 2012).

While there has been a decrease in the maximum length of care-giving leaves for new fathers following childbirth, new adoptive parents, and employees caring for seriously ill family members, the study also found that more employers today are providing at least some replacement pay for maternity leave during the period of disability.

The data show that employers continue to find ways to offer flexibility to their employees, despite the economic challenges they face. Employers are dealing with lingering economic instability by trying to accomplish more with fewer employees. While it may have been expected that employers would cut back on flexibility entirely during the economic downturn, we are seeing employers leverage flexibility to remain competitive and recruit and retain the best talent.

Each year, SHRM surveys its members to produce an Employee Benefits research report that provides comprehensive information about the types of benefits U.S. employers offer to their employees. For the 2011 Employee Benefits research report by SHRM, 284 benefits were explored, covering the areas of health care and welfare benefits, preventive health and wellness benefits, retirement savings and planning benefits, financial and compensation benefits, leave benefits, family friendly benefits, flexible working benefits, employee services benefits, housing and relocation

<sup>3</sup>Matos, K. & E. Galinsky (2012). 2012 National Study of Employers. [http://familiesandwork.org/site/research/reports/NSE\\_2012\\_.pdf](http://familiesandwork.org/site/research/reports/NSE_2012_.pdf).

benefits, and business travel benefits. The report also examines trends in employee benefit offerings over the last 5 years.

Regarding paid leave benefits, the 2011 Employee Benefits research report found that:

- 97 percent of respondents said their organizations provide paid holidays,
- 92 percent provide paid vacation days (48 percent provide paid time off (PTO) plans, 44 percent provide paid vacation plans), and
- 90 percent provide paid bereavement leave.

Regarding flexible working benefits, the report revealed that:

- 53 percent provide flextime,
- 45 percent provide telecommuting on an ad-hoc basis, 34 percent provide telecommuting on a part-time basis, and 20 percent provide telecommuting on a full-time basis, and
- 35 percent provide compressed workweek.<sup>4</sup>

#### FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act of 1993 (FMLA) provides unpaid leave for the birth, adoption or foster care placement of an employee's child, as well as for the "serious health condition" of a spouse, son, daughter, or parent, or for the employee's own medical condition. The leave also provides specific protections for employees who have family members that have been called-up to serve on active duty in the military or for employees to take care of a covered service member who has suffered an injury or illness incurred in the line of duty.

From the beginning, HR professionals have struggled to interpret various provisions of the FMLA. What began as a fairly simple 12-page document has become 200 pages of regulations governing how the law is to be implemented. This is the result of a well-intentioned, but counter-productive attempt to anticipate every situation in every workplace in every industry—without regard for the evolving and diverse needs of today's workforce or the new operations and technologies that organizations employ to stay competitive.

Among the problems associated with implementing the FMLA are the definitions of a serious health condition, intermittent leave, and medical certifications. In fact, 47 percent of SHRM members responding to the *2007 SHRM FMLA and Its Impact on Organizations Survey* reported that they have experienced challenges in granting leave for an employee's serious health condition as a result of a chronic condition (ongoing injuries, ongoing illnesses, and/or non-life threatening conditions). Vague FMLA rules mean that practically any ailment lasting 3 calendar days and including a doctor's visit now qualifies as a serious medical condition. Although we believe Congress intended medical leave under the FMLA to be taken only for truly serious health conditions, SHRM members regularly report that individuals use this leave to avoid coming to work even when they are not experiencing serious symptoms. This behavior is damaging to employers and fellow employees alike.

I have experienced the above difficulties at various organizations. However, while our employees are covered by and eligible for the FMLA, *INTUITIVE* is generally able, through our programs, to provide short-term disability and paid leave benefits to employees while they are out on leave. When an employee returns from leave, he or she returns to their same work, or something even better that is in keeping with their personal professional goals, which as I mentioned are in writing and are routinely reviewed for progress.

#### HEALTHY FAMILIES ACT

Mr. Chairman, we share the goal that employees should have the ability to take time off to attend to their own or a close family member's health, or to seek or provide help related to domestic violence. However, at a time when employers are facing unprecedented challenges, imposing a costly paid leave mandate on employers could easily result in additional job loss or cuts in other important employee benefits.

As a result, SHRM has strong concerns with the one-size-fits-all mandate contained in S.984, the "Healthy Families Act (HFA)." The bill would require public and private employers with 15 or more employees to provide 56 hours—effectively 7 days—of paid sick leave annually to each employee. Employees who work for 20 or more calendar workweeks in the current or preceding year would be eligible for HFA leave, and they would accrue 1 hour of paid sick leave for every 30 hours

<sup>4</sup> Society for Human Resource Management (2011). 2011 Employee Benefits: A Research Report by SHRM.

worked. Under the HFA, an employee begins accruing the sick time upon commencement of employment and is able to begin using the leave after 60 days. The paid sick time could be used for the employee's own medical needs or to care for a child, parent, spouse, or any other blood relative, or for an absence resulting from domestic violence, sexual assault or stalking. While the HFA presents a host of practical concerns, I would note four significant challenges with this bill from an HR professional's perspective.

First, despite the merit of employer-provided leave for the nominal events in the legislation, the qualifying events that may trigger leave eligibility for the employee in the HFA, like the current FMLA, are still vague and ill-defined. Under the current FMLA, employers and employees alike must make a determination if the requested leave is eligible for coverage as a qualifying event. While in many instances this determination of leave eligibility under the FMLA can be made easily, in others it requires the employer and employee to make a rather subjective, sometimes intrusive determination to determine leave eligibility—often leaving both parties frustrated and distrustful of each other. The HFA allows an employer to require an employee's request for paid sick time be supported by a certification issued by a health care provider, but only if the leave duration was longer than 3 consecutive work-days. But episodic or intermittent leave use under the FMLA remains the primary administrative challenge for employers. Thus, unfortunately, we anticipate that employers and employees will have a similar experience under the HFA in trying to determine leave eligibility.

Second, the HFA would disrupt current employer paid leave offerings. For example, the legislation states that unless the employer's existing leave policy meets the "requirements" and the "purposes and conditions outlined in subsection (b)", the employer will still be required to provide the additional paid sick time required by the HFA. If enacted, the HFA would require all covered employers to amend or drop their existing leave policies to comply with the HFA requirements. HR professionals, not the Federal Government, are best situated to understand the benefit preferences of the employees at their respective organizations.

Third, the HFA specifically states that the Act does not "supersede (including preempting) any provision of any State or local law that provides greater paid sick time or leave rights," thus forcing employers to comply with a patchwork of varying Federal, State and local leave laws—as well as their own leave policies. As it stands now, employers consistently report challenges in navigating the various conflicting requirements of overlapping State and Federal leave and disability laws. The HFA would only add to the already complex web of inconsistent but overlapping leave obligations.

Finally, the HFA's inflexible approach could cause employers to reduce wages or other benefits to pay for the leave mandate and associated compliance costs, thereby limiting employees' benefit and compensation options. Any employer has a finite pool of resources for total compensation. Thus, if organizations are required to offer paid sick leave, they will likely absorb this added cost by cutting back or eliminating other employee benefits, such as health or retirement benefits, or forgo wage increases. Keep in mind that many employees may prefer higher wages or other benefits over receiving more paid sick leave—yet another way the HFA's one-size-fits-all approach will not meet the needs of all employees.

SHRM believes the Federal Government should encourage paid leave—without creating new mandates on employers and employees. As has been our experience under the FMLA, proscriptive attempts to micro-manage how, when and under what circumstances leave must be requested, granted, documented and used would be counter-productive to encouraging flexibility and innovation. If an employer paid sick leave mandate were enacted, an employer's focus would have to be on documentation of incremental leave and the reasons for the leave, rather than on seeking innovative ways to help employees to meet the demands of both their work and personal lives.

As mentioned, my company provides 20 days of paid leave, plus 10 floatable paid holidays, and other leave including bereavement and VIP leave. It is unclear whether the HFA would require *INTUITIVE* to provide another 7 days of leave in addition to our PTO. In this economy, many employers cannot afford that. Even those that can afford it will have to cut employee benefits somewhere else. In our case at *INTUITIVE*, profits are shared with the employees through our profit sharing program. The cost of adding 7 additional days of paid leave, on top of our 30-plus days of leave, would have to come from somewhere and would therefore curtail or remove some other benefit, or lessen our profit sharing.

It's been argued that generous employers like *INTUITIVE* should welcome the HFA because it would level the playing field for small businesses that offer paid leave. But that view misses the point of why *INTUITIVE* or any employer gives

paid leave. We provide generous paid leave so that we can continue to be an employer of choice for employees and applicants in our area. What we do not want is a government-imposed paid leave mandate to take away our competitive edge over other employers.

If Congress wants to compel employers to offer paid leave, we do not believe it should punish the employers that already do. Organizations such as ours that are already extremely successful with flexible workplace outcomes should not be brought down to the mediocre level that regulatory approaches would be trying to get *not-so-well-run* companies up to achieving.

#### SHRM'S PRINCIPLES FOR A 21ST CENTURY WORKPLACE FLEXIBILITY POLICY

While SHRM has serious concerns about the HFA, both SHRM and its members believe the United States must have a 21st Century workplace flexibility policy that reflects the nature of today's workforce, and that meets the needs of *both* employees and employers. It should enable employees to meet their work and personal needs while providing predictability and stability to employers. Most importantly, such an approach must encourage employers to offer greater flexibility, creativity and innovation to meet the needs of their employees and their families.

In 2009, SHRM developed a set of five principles to help guide the creation of a new workplace flexibility statute.<sup>5</sup> In essence, SHRM believes that all employers should be encouraged to provide paid leave for illness, vacation and personal days to accommodate the needs of employees and their family members. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied Federal, State and local requirements and would qualify for a statutorily defined "safe harbor." The principles are as follows:

**Shared Needs**—SHRM envisions a "safe harbor" standard where employers voluntarily provide a specified number of paid leave days for employees to use for any purpose, consistent with the employer's policies or collective bargaining agreements. A Federal policy should:

- Provide certainty, predictability and accountability for employees and employers.
- Encourage employers to offer paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing—and often conflicting—existing patchwork of regulations.
- Create administrative and compliance incentives for employers who offer paid leave by offering them a safe-harbor standard that would facilitate compliance and save on administrative costs.
- Allow for different work environments, union representation, industries and organizational size.
- Permit employers that voluntarily meet safe harbor leave standards to satisfy Federal, State and local leave requirements.

**Employee Leave**—Employers should be encouraged to voluntarily provide paid leave to help employees meet work and personal life obligations through the safe harbor leave standard. A Federal policy should:

- Encourage employers to offer employees with some level of paid leave that meets minimum eligibility requirements as allowed under the employer's safe harbor plan.
- Allow the employee to use the leave for illness, vacation, personal and family needs.
- Require employers to create a plan document, made available to all eligible employees, that fulfills the requirements of the safe harbor.
- Require the employer to attest to the U.S. Department of Labor that the plan meets the safe harbor requirements.

**Flexibility**—A Federal workplace leave policy should encourage maximum flexibility for both employees and employers. A Federal policy should:

- Permit the leave requirement to be satisfied by following the policies and parameters of an employer plan or collective bargaining agreement, where applicable, consistent with the safe harbor provisions.
- Provide employers with predictability and stability in workforce operations.
- Provide employees with the predictability and stability necessary to meet personal needs.

<sup>5</sup> Society for Human Resource Management (2009). Principles for a 21st Century Workplace Flexibility Policy <http://www.shrm.org/Advocacy/Issues/WorkplaceFlexibility/Documents/051209%20FINAL%20WF%20Principles.pdf>.

**Scalability**—A Federal workplace leave policy must avoid a mandated one-size-fits-all approach and instead recognize that paid leave offerings should accommodate the increasing diversity in workforce needs and environments. A Federal policy should:

- Allow leave benefits to be scaled to the number of employees at an organization; the organization's type of operations; talent and staffing availability; market and competitive forces; and collective bargaining arrangements.
- Provide pro-rated leave benefits to full- and part-time employees as applicable under the employer plan, which is tailored to the specific workforce needs and consistent with the safe harbor.

**Flexible Work Options**—Employees and employers can benefit from a public policy that meets the diverse needs of the workplace in supporting and encouraging flexible work options such as telecommuting, flexible work arrangements, job sharing and compressed or reduced schedules. Federal statutes that impede these offerings should be updated to provide employers and employees with maximum flexibility to balance work and personal needs. A Federal policy should:

- Amend Federal law to allow employees to manage work and family needs through flexible work options such as telecommuting, flextime, part-time, job sharing and compressed or reduced schedules.
- Permit employees to choose either earning compensatory time off for work hours beyond the established work week, or overtime wages.
- Clarify Federal law to strengthen existing leave statutes to ensure they work for both employees and employers.

#### WORKPLACE FLEXIBILITY EDUCATIONAL EFFORTS

As explained earlier in my testimony, in addition to advocating for a new approach to workplace flexibility public policy, in February 2010 SHRM has also formed a multi-year partnership with the Families and Work Institute (FWI).

The primary goal of this partnership is to transform the way employers view and adopt workplace flexibility by combining the research and expertise of a widely respected organization specializing in workplace effectiveness with the influence and reach of the world's largest association devoted to human resource management.

By highlighting strategies that enable people to do their best work, the partnership promotes practical, research-based knowledge that helps employers create effective and flexible workplaces that fit the 21st century workforce and ensures a new competitive advantage for organizations.

Although FWI is an independent non-advocacy organization that does not take positions on these matters, and the position of SHRM should not be considered reflective of any position or opinion of FWI, I'd like to briefly mention one of the key elements of the SHRM/FWI partnership, the *When Work Works* program. It seeks to educate and showcase employers who are meeting the needs of our 21st century workforce.

*When Work Works* is a nationwide initiative to bring research on workplace effectiveness and flexibility into community and business practice. Since its inception in 2005, *When Work Works* has partnered with an ever-expanding cohort of communities from around the country to:

- Share rigorous research and employer best practices on workplace effectiveness and flexibility.
- Recognize exemplary employers through the Alfred P. Sloan Awards for Business Excellence in Workplace Flexibility.
- Inspire positive change so that increasing numbers of employers understand how flexibility can benefit both business and employees, and use it as a tool to create more effective workplaces.

#### CONCLUSION

In the global, 21st century economy, workplace flexibility policies help multinational corporations, non-profit organizations and small businesses meet the needs of their employees. At its core, workplace flexibility is about improving business results by employers giving people more control over their work time and schedules. My company, *INTUITIVE*, in Huntsville, AL, and employers across the country, know best how to compete for talent by providing benefits that can help employees succeed in their specific industries and manage their lives away from the workplace.

My company is uncommon in the magnitude of its success. But we are not alone. There are many, many wonderful places to work out there in this country, and we should not let efforts here in Washington take away their ability to continue to create good jobs and great places to work.

SHRM remains committed to working with the committee and other Members of Congress to ensure employers can continue to provide flexible paid leave to employees in a manner that does not threaten existing benefits or create unnecessary and counterproductive regulations. We believe it's time to pursue a new approach to this issue absent of rigid, unworkable mandates that result in unfavorable and unintended consequences. It's time to give employees greater flexibility and to give employers more predictability. It's time to *encourage* paid leave—*without* stifling existing innovative benefits or hindering job creation.

Thank you. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Phillips.

And now we will begin a round of 5 minute questions. I will start with Ms. O'Leary. In your testimony, you talked about how the number of benefits under the Pregnancy Discrimination Act, how the number increased,

“From 1961 to 1965, only 14 percent of college-educated women workers received paid leave through, before or after, the birth of the first child. This number dramatically increased to 59 percent in the immediate period after passage of the PDA, and holds at 66 percent of professional workers in 2008.”

OK, but the next sentence is what is important,

“For less educated workers, the law has made little difference with regard to employee benefits because these workers are less likely to have access to any paid leave. For workers with less than a high school degree, the access to paid leave after childbirth remains nearly constant from 1961 to 2008, fluctuating between 18 and 19 percent.”

I was just listening to Ms. Phillips. I do not know about INTUITIVE, I do not know the nature of the workforce, but it sounds like a highly educated workforce. I do not know, but it sounds like it just from the kind of work you do.

But I am interested in this dichotomy between highly educated workers that have professional jobs and people like Ms. Ortiz. I do not know Ms. Ortiz—but I guess you are trying to get further education, but you are working. People have one or two children, but they may or may not have just a high school education.

What about that dichotomy? Please address that.

Ms. O'LEARY. Thank you so much, Senator Harkin.

I think it is really critical to understand what the Pregnancy Discrimination Act does. The Pregnancy Discrimination Act is something that requires employers not to discriminate against women who are having a child in the sense that it makes sure that they have equal benefits to the benefits that are already provided to all employees.

For example, if an employer provides paid sick days or they provide short-term disability, then women should be able to access that for the purposes of giving birth to a child or anything related to pregnancy and childbirth.

The fact of the matter is that when this statute passed, many professionals already had—professional men and women—already had access to these types of work because it is a way of retaining professional employees. We want to make sure to keep them. However, low-wage workers generally had them only if their unions were bargaining for them. So we had about, as I said, 18 percent more lower wage workers at the time, 1969, had access to this than college educated.

What happened is the moment this passed, then that meant that professional workers immediately got access to these short-term disability or the paid sick days, but it provided no affirmative rights, and no affirmative rights to make sure that you could take leave. So this story has not changed really for low-wage workers.

I think if you just take a personal story here on this panel and contrast me with Kimberly in terms of the situations we have. My parents were in the middle class. They put a second mortgage on their home in order to put me through college.

I was very lucky and was able to get very highly educated. I have two young children, 5 and 2. My 2-year-old has some health issues. He has really struggled in the first couple of years. I have had to take him to physical therapy and occupational therapy. My boss, who is here today, has been incredibly flexible with me and I feel so lucky for that. I sometimes will call in the morning and say, "I cannot come in until 11 o'clock." Or, "I am going to have to take 2 hours off in the middle of the day today to deal with this."

What a contrast we have right here at our very table between my situation and the situation of Kimberly. This is what is wrong with what has happened with our laws, which is that we have not actually made sure that not only am I protected, but all workers are protected, including the Kimberly's of the world.

The CHAIRMAN. I think that is a very important point, and I think it is also important to point out that people talk about the Family and Medical Leave Act, which is now 20 years old. The workforce today is different than it was 20 years ago, but even FMLA only covers about half of the workforce.

Ms. Lichtman, compare the United States with—what is our neighbor like in Canada? I do not even know. I am asking a question. They always say a good lawyer does not ask a question unless he knows the answer. I do not know the answer to that. I mean other countries, do they provide paid leave?

Ms. LICHTMAN. Most other industrialized countries do. Very few countries in this world—hardly any, 2, 3, sometimes 5, depending on how you count, but not 10, not 2 hands, less than 1—are in our position of providing no paid leave.

What I said earlier in my testimony, Family and Medical Leave is only as good as far as it goes. First, it is not paid. Second, as you point out, only about half of our American workers are covered. And the fact that it has been used 100 million times in these 20 years is maybe good news, but it is also terrible news in that it shows how American families, working families, are struggling to balance their work and family responsibilities. And needing national public policies in place that allow them to flourish as family members, as Ann and Kimberly just talked about, and be responsible workers.

I thought Kimberly's very poignant story, she was working very hard to work hard, and still was failing because of her family responsibilities in the eyes of some manager, who could not see beyond her or his nose that investing in Kimberly was investing in an extraordinary employee, for productivity, for morale. The cost of turnover is replete in our statistics.

I think we stand amongst very few Nations of the world that do not provide good national policies to allow our families to both flourish as workers and employees.

The CHAIRMAN. I think the answer to my question is that Canada does provide paid leave.

Ms. LICHTMAN. It does, along with almost every other country.

The CHAIRMAN. I understand that. We are 4 out of 178.

Ms. LICHTMAN. Right.

The CHAIRMAN. Thank you very much.

Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman.

And I want to thank Ms. Phillips for the precise suggestions that she gave in her speech, and also the explanation of why, even though her company provides all of these, she would not suggest that they be made a mandate for all of the other businesses. I thought that was a very important statement.

Now, your company clearly has a well thought out and generous leave program, since you provide a flexible paid time off program for your employees for holidays, for vacation, for illness, for tending to personal matters, I take it that you are not frequently in a position of having to verify employees' medical claims. In contrast to the Healthy Families Act, which would impose detailed medical certification procedures, and as you well know, the employers face fines and litigation liability when they obtain too much medical information and run afoul of the Health Information Privacy Protection Act, or HIPPA, or the Genetic Information on Discrimination Act.

Can you describe how this Catch-22 would put employers and HR professionals in a bind?

Ms. PHILLIPS. Well, we find ourselves in that role a lot of times when various regulations kind of overlap or step on each other. We are trying to not break one and we have to complete what we have to do on the other as well.

In terms of when our folks have medical issues and are going to use short-term disability, we are very careful with all the processes so that they are providing the needed documentation directly to the carrier that is working with them, and have a case manager. You know, we do not want to have information that would not fit well with the regulations in HIPPA and so on.

So when you add extra things that have new requirements and they are going to require us to know something or ask questions in an arena that causes us a liability somewhere else, that is always problematic. On the leave side of it, we do PTO and it does not matter why you are gone. We leave that up to everybody to manage their own. We do not need doctor's excuses. We do not get into any of those things.

But when it comes to helping an employee with an issue they do have going on, we are involved, but not to the level of receiving information about them personally on a medical basis that would cause us a problem elsewhere. So I do not know where new requirements might put us in terms of that difficulty.

Senator ENZI. Thank you, and I know that you have a number of Federal contracts which brings you under the jurisdiction of the Office of Federal Contract Compliance Program, the OFCCP. I un-

derstand this agency requires a number of annual filings and is looking at increasing the data that contractors like you are going to be required to maintain and submit.

Could you describe the manpower it takes your small company to comply with this OFCCP rule currently and the value you get from that effort? And if you have any suggestions to reduce that burden, we would appreciate it if you would share those.

Ms. PHILLIPS. Well, we do not pay somebody else to write it. We write our Affirmative Action Plan. I do. There is a lot of time involved in gathering the data. Occasionally, I might have some of my staff help a little with some of the numbers down in the weeds, but I generally pull all that data together.

A company like ours that is trying to be the best and get the best is always pulling data and looking at it anyway. So in terms of value, we would be looking at all of those categories and numbers anyway to see how well we are putting ourselves out there, and making ourselves attractive to all the possible groups that there are, knowing that only a blending of as much variety as possible gets us fresh ideas and takes us forward, and helps us be successful.

In terms of the suggestions that the OFCCP has around, I think for example, gathering more numerical data about veterans, or gathering more numerical data about disability. From what I have read about the proposed regulations, they are trying to get people to think, "Hey, you should have," I think, "Like 7 percent veterans and 7 percent disability." My perspective is I have 26 percent veterans. I have 16 percent disabled.

So rather than my having to spend a lot of hours working on a process that is meant to get other people up to that level, it would be nice if somebody were focusing on companies like mine saying, "How do you do that? And let's mirror that," because what we are doing works so well.

Senator ENZI. That may be a question I will submit in writing. I appreciate that. I was impressed when I heard about your veterans program because it is more important now than ever to look for the men and women who bravely served in the military, and you have been at the forefront in that activity, and I thank you for that.

Can you talk a little bit more about your Veterans Information Program and how that benefits your employees?

Ms. PHILLIPS. I can. We are very proud of our VIP program, as we call it.

It includes letting the VIP coordinator know when we are going to hire somebody that we learned is a vet, and we hook them up with that person in the first day or two. They generally take them out to lunch, talk to them a bit. They find out more about them, and then they connect them to one person in a list of veteran volunteers that we have within the company who maybe has something in common with them. Maybe they were the same rank, or they served in the same location, or they are from the same home State, or whatever, something that gives them some commonality. So they know somebody else immediately in the company that they connect with.

And then that person plays a role of sponsor, sort of, answers questions, give you tips about, "What I learned from transitioning out of military life into the civilian world," or tips about, "When I moved to Huntsville, I learned this, I did this." Just general information that is very helpful to that new veteran employee that we have in getting them assimilated into the company culture and in helping them transition over into the civilian world, if this is their first job after military service.

Our program also includes the 3 days' paid leave that I mentioned for veterans to visit VA hospitals, or for spouses to have time off if they have a spouse that is returning during mid-term tour of duty.

We also pay the difference between military pay and company pay for up to 6 months if the reservist is activated. We recently had a Lunch "N" Learn for vets, and brought in officials from six agencies in the area to talk about services that are available to them, to talk to our employees about opportunities to volunteer, to help with veterans' activities. It is a very robust, very active program within the company.

Senator ENZI. Thank you. My time is expired. I do have questions for the rest of you, and if I do not get to ask them, I will submit them, and would appreciate answers because you all have vital information that we need.

Thank you.

The CHAIRMAN. Thank you, Senator Enzi.

And in order of appearance, Senator Merkley, Senator Franken, Senator Whitehouse, Senator Blumenthal.

Senator Merkley.

#### STATEMENT OF SENATOR MERKLEY

Senator MERKLEY. Thank you very much, Mr. Chair, and thank you all for your testimony.

Ms. Lichtman, in your written testimony, you mentioned the back to work breast feeding flexibility provisions in the Accountable Care Act. And in honor of Mother's Day, how is implementation of that going?

Ms. LICHTMAN. It is just beginning. Admittedly, I do not have any really hard data. It is a start, and we will have to do a little bit of research and get back to you on exactly what is happening in the early stages of implementation.

In the community that I often work in representing moms and new moms, the excitement around the program has been really quite encouraging. And so I am hoping, indeed, that the employer community embraces the program as much as working moms who need it.

I will have to get back to you on specifics. I do not know them.

Senator MERKLEY. Well, thank you. I know when implementation occurred in Oregon with our State law, it was amazing how well the employers adopted it. We had a safe harbor provision or an opt out, if you will, for employers that had a hardship, and not a single company in Oregon has utilized that opt out, which is a real tribute.

Ms. LICHTMAN. Good.

Senator MERKLEY. Thank you.

Ms. Phillips, thank you for your testimony about the tremendous benefits that INTUITIVE provides and a prospering professional company.

I am very struck by the tale of two worlds, the service contractor at the Statue of Liberty that employs Ms. Ortiz and a highly professional firm that you are part of that is seeking to recruit the best talent, and part of that are good benefits.

As you heard Ms. Ortiz's story about being an employee of a service contractor, did you have any thoughts about how provisions of this bill might help folks like her or other ideas from your human resource experience? Because here she is trying to raise a child, her hours have been reduced, her scheduling is uncertain, her benefits are minimal, and it is a different world from the world you live in, but yet, you are in human resources.

Do you have any thoughts on the different challenges in the service world and the professional world that you are a part of?

Ms. PHILLIPS. Well, I have worked in different areas and my thought around when you move into a workforce, and you are trying to look at what the issues are, and work with managers, and help train them on how to think that there is a lot of room for improvement there when it comes to areas such as that. In understanding that what you have is a resource, and that what you do and how you manage it is going to determine what you have in the future, and how successful you are.

In my thoughts around regulation, if we make it so that the good employers can flourish in what they are doing and we make it so that others try to do what they are doing, then my hope would be that a company who looks at it differently would come to say, "What are they doing that works so well?" "Why do they get everybody in town working for them and that then companies such as ours could have an impact in that sense?"

If you provide all of these things, do you have safe harbor? You are going to fit into this category and be fine, then that would be a real incentive, I would think, to companies to do better at how they manage all those things, how they take care of their people, what kind of benefits they offer.

Senator MERKLEY. I suspect that the firm providing the services at the Statue of Liberty is submitting a contract proposal, often the low-cost proposal is chosen. So we have tremendous incentives to strip employees down to the very minimum of benefits, kind of very different than the incentives in a professional environment where you are trying to retain employees. So I am not sure that that would work in that setting, but I appreciate your thoughts on it.

Ms. PHILLIPS. The Government could look at choosing best value rather than lowest cost when they choose a contractor.

Senator MERKLEY. Yes, and in some ways that is what this conversation is about because how do you define "best value?" Does best value include basic guidelines for how people are treated when they are employed?

Ms. PHILLIPS. Right.

Senator MERKLEY. That is the heart of this discussion, really.

There is a growing movement of what is essentially on-demand scheduling, which is extremely difficult for working families be-

cause you have to be on-call all the time in order to work even a few hours a week.

And Ms. Ortiz, as you went to 15 hours, it sounds like that is close to what you were. You had to be available, because you got very short notice on when you were scheduled. So you could not, for example say, "Well, I have 2 days of work there, so I can take a second job and have 3 or 4 days of work over here." Is that a fair characterization?

Ms. ORTIZ. Yes, the days that I worked there, I never really knew, so there was really no preparation because I never knew what days I would be scheduled for.

Senator MERKLEY. Any additional thoughts that you have on kind of the basic outline of what would be very helpful to you, better requirements on scheduling?

Ms. ORTIZ. I think we definitely need better requirements on scheduling. Workers do need a few paid sick days, and I think that the minimum wage should be equivalent with the cost-of-living, and with the rising cost-of-living at that.

Senator MERKLEY. Yes. Looking at the basic math you were presenting, when you were reduced to 15 hours, you were earning \$135 a week, which is \$8,000 or \$9,000 a year.

I do not know that any of us have ever walked in the shoes of trying to raise a child with medical difficulties earning a modest amount. And I really appreciate you coming in and sharing your journey, because it is so reflective of the challenge that so many working Americans are facing today. And thank you for sharing that.

Ms. ORTIZ. Thank you for having me.

The CHAIRMAN. Senator Franken.

#### STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. I want to thank all the witnesses for being here today. I am very proud of our chamber of the Senate today. Here we are, a House of Congress having a hearing on a subject that unquestionably impacts women disproportionately, and our witnesses are actually women.

[Laughter.]

Very proud, Mr. Chairman and the Ranking Member, for that. We are talking about Mother's Day, and I would just like to say something about my mother-in-law, Fran Bryson, who turned 89 yesterday.

When she was 29-years-old, she was widowed. Her husband, a World War II decorated veteran, died in a car accident, leaving her widowed with five kids. And she—I do not think she would mind me saying this—that she worked in the produce department of a grocery store.

All those kids, my brother-in-law Neil went in the Coast Guard and became an electrical engineer. All my sisters-in-law and my wife were educated because of Pell Grants and other scholarships. And my mother-in-law, when the youngest went to high school, she herself went to college on the GI bill, and graduated, and became a teacher, and taught title I kids, and because of that, all her GI loans were forgiven.

A real testament to what everyone in that family became—a productive member of society, and it was all because of government programs. They lived on Social Security Survivor Benefits.

Ms. Phillips, it sounds like you work for a great company. You were named “No. 2 Best Small Company to Work for in the United States” in 2011. That means, presumably, all but one small company in the country is worse than you, by my math.

And this begs the question, I would like to ask of either Ms. O’Leary or Ms. Lichtman. In a sense, what Ms. Phillips is saying is that she wants to preserve her company’s competitive advantage. But is it really in the best interest of our society at large, for all the other people who work for all the other small businesses, except for the one better than INTUITIVE, that the well-being of millions of workers be compromised to preserve the competitive advantage of a couple of small businesses?

Ms. O’LEARY. Senator Franken, if I could address that question. I appreciate you raising it because I have been sitting here thinking about this issue of our country’s competitive edge, and how we help not just businesses flourish, but how we help our children flourish, and how we help our families flourish.

To point an example of your own family, your in-laws, I think is a perfect example where we look at a single mom who had financial resources because she got aid from the Government because of Social Security Disability Insurance. And then, presumably, she had an employer that provided—

Senator FRANKEN. Survivor benefits.

Ms. O’LEARY. Excuse me, survivor’s benefits. So she had some supplemental income, which I think is so critical and presumably an employer that supported her in doing the work she needed to do as a single mother. This is not the case for so many.

We, actually, at the Center for the Next Generation, are about to release a study looking at the competitiveness of how the United States has been doing in investing in our children versus how our global competitors are doing: China and India. It is surprising, I think, when you look at this that actually China and India have much better pro-family policies than we do. They have paid maternity leave in those countries. They support women entering the workforce and they provide resources when families have—

Senator FRANKEN. The one child policy in China is kind of bad.

Ms. O’LEARY. Yes, so there are some problems, obviously, the one child policy and the inequities in that country. But the fact of the matter is that they have billions of people that they are educating and investing increasingly in education and in pro-family policies.

So while we certainly do not want to replicate their one child policy—

Senator FRANKEN. Yes.

Ms. O’LEARY [continuing]. I think we can learn from our competitors, and we have to remember that the competitive edge is about not just businesses, it is about making sure that our children can compete and can thrive in the world ahead.

Senator FRANKEN. I was interested in the statistics about paid family leave. That we are one of just a few countries, the others are Swaziland, and Papua New Guinea that I can find. And there

are other countries that are doing pretty well that have it like Germany.

Ms. O'LEARY. Japan.

Senator FRANKEN. Yes, well Japan is having some problems, but Germany is doing really well.

Thank you, Mr. Chairman, and I will have more questions if we get there.

The CHAIRMAN. We will have another round.

Ms. Ortiz, I want to return to you because, as I said, this is real life, what you have been through, and then when you did this Retail Action Project that you talked about, and you surveyed all of these people.

It seemed that the people you surveyed, at least from what you said in your testimony, they never really knew what their schedule was going to be. They could be at the whim of a call in just a couple of days. And you said, "Out of the workers surveyed, less than a quarter had ever taken a paid sick day, and only 17 percent had a set schedule."

When you work for a great company like INTUITIVE, you get, probably, pretty good schedules, and you know what your work is like. I am thinking of people that, let us face it, the people that clean our public bathrooms, the people that sweep the floors, the people that work behind counters at the Statue of Liberty and places like that, people who are maybe starting out in the workforce, or perhaps because of education, language skills, or whatever, they are stuck. I mean, that is their life's work.

It seems to me that there ought to be at least some minimal, some minimal, kind of a Federal law that would say that you get to take some time off, paid time off, for a sick child or a sick parent or maternity, some basics like that.

How would the lives of those people, just in your own words, how would it be different if we had something like that for people in your situation?

Ms. ORTIZ. It would be, I think, amazingly different. Like I said, it was never a matter of not working hard and not wanting to work, it was just circumstances. So if we had a few, like I would say, securities definitely people would work hard. I think productivity would go up. Happy workers mean happy businesses, I think.

I definitely think it would improve productivity and it would better peoples' lives.

The CHAIRMAN. Well, you talked about your own difficulty when you had your children. Was your boss, he or she, sympathetic to your need to take time off? They said, "Sure, take time off." How did that work?

Ms. ORTIZ. They were completely not sympathetic. That was my first job. I started at 16 and I was very eager to work. I would come in at 5:30 a.m., stay until 11. If they had an event, I would stay overnight, and when I had my child, that changed. So it was not Johnny on the Spot or Kimmy on the Spot anymore. "She has to be home at a certain time. She cannot come in at 5:30." So they were not sympathetic at all, like I was then labeled unreliable.

The CHAIRMAN. Back to what I said starting with Ms. O'Leary. I think I heard something, "We do not want a one-size-fits-all," Ms. Phillips said, in terms of law. But it seems like we do need a one

size that puts a basic floor out there below which we say, "People are just not going to fall." "You are going to have some paid time off if you have a child, if that child gets sick, if you have a parent that needs attending to."

People who are making the kind of income Ms. Ortiz is making with two children who have medical needs, you just cannot give up a paycheck, or half a paycheck for even 2, or 3 days, or 4 days of pay. So that is the stress that comes in, "I want to take care of it, but I cannot give up my income. If I give that up, then my family will suffer in other ways."

That is the bill that I introduced, the Healthy Families Act. It is geared toward that. Not a one-size-fits-all, but sort of, "Here is a floor, folks. We are just not going to let people go below that." And to put America back up as a Nation that has some basic human rights for people who are working in jobs that do not provide that basic structure. I do not mind safe harbor things and stuff like that. That is fine, but as long as there is some basic thing where they cannot go below.

If a safe harbor, for example, in California, which has great leave policies, paid leave policies, I know. My daughter works out there and she took advantage of it; wonderful. But if you just had a safe harbor, then would employers be able to go below that? It would seem to me, we would want to let the States still have to set floors, if they want to, in their own States. But there ought to be some national floor that we have and there is not.

I just want to correct one other thing too. The Healthy Families Act does not require employers to collect medical certification. It gives them the choice to do so if they want to. That was in response to say, "Well, maybe people will cheat," or something like that. Well, you give the employer the option, if they want to require the medical certification, they can, but the bill does not require it.

OK, I will turn to Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman.

I think we are all upset with Ms. Ortiz's situation. Now, as I understand it, the Statue of Liberty is a National Park, and the National Park's contract is with people to run gift shops, and food services, and all of the different things that they do there.

I am not familiar with the Statue of Liberty contracts. I am a little familiar with the people in Yellowstone Park that provide different services, and how they have to bid. And it does seem to me like if we are going to, that maybe we ought to try out some of these things on the Federal contractors. How are some Federal contractors doing this? You know, but we have not tested this in a laboratory yet, so now we are going to impose it on all the small businessmen, when we are not even sure how the Federal contractors do it. So that might be a logical place to start on this and see how it all works out because that is pretty appalling.

The CHAIRMAN. I am all for that.

Senator FRANKEN. I like that.

Ms. ORTIZ. Me too.

Senator ENZI. Moving on to a different question here. For Ms. O'Leary, the Center for American Progress publicly supports and advocates for this Healthy Families Act, and I assume that you support it as well.

As you know, the paid leave mandated under it could be applied for, "Any absence resulting from obtaining professional medical care." As drafted, professional medical care could apply to numerous cosmetic health procedures, and a host of other elective options. Do you believe that employers should be required to offer paid leave for procedures such as teeth whitening or Botox injections?

Ms. O'LEARY. OK. Senator Enzi, first, I just want to thank you for your suggestion on Federal contractors. In my role as a Senior Fellow at the Center for American Progress, I wrote a paper suggesting that we should start with Federal contractors in terms of requiring paid sick days and requiring greater workplace policies. Because, as you say, we should not have our great Nation's Statue of Liberty or other national parks offering employees benefits that do not support workers. I just want to applaud you for that recommendation. I think it is so critical and I would like to work with you on thinking about how to move forward with that.

As to your question about paid sick days, I certainly think that there is room for having these open and honest dialogs. Certainly thinking about cosmetic surgery is for purely cosmetic purposes is not what was intended in terms of this law.

What we are talking about is the situations that Kimberly faced, frankly, that I face other than the fact that I have a good employer. But we have sick children. We have sick children who need us to take them to the doctor, and that is a very challenging situation. It is much more challenging for Kimberly than it is for me.

And I want to make sure that as Senator Harkin suggested, let us have a floor. We are not requiring everybody to have some cookie cutter suggestion, but we want to make sure that some basic, decent rights go on here that make sure that we, as a society, say, "Children need their moms and their dads to take them to the doctor." And research says that if they do, their children are healthier, they are doing better, they are thriving, particularly kids with chronic health conditions. That is what we are talking about here.

Senator ENZI. Well, thank you.

And for Ms. Lichtman, the nonpartisan Congressional Budget Office has estimated that the Healthy Families Act will cost private employers \$11.4 billion over 5 years, a substantial amount of that will fall on the smaller employers who are already struggling to make payroll in these difficult times.

My actual definition of a small businessman is you have not been a small businessman unless you have woken up in the middle of the night and said, "Payroll is tomorrow. How am I possibly going to meet payroll?" And you just sweat through it the rest of the night and you do find a way to pay your employees. You do not always get to pay yourself, but if this bill is enacted, employers will be forced to adjust somewhere and that would either be reducing current benefits or downsizing the number of employees, which adds to the ranks of the unemployed.

So could you put yourself in the shoes of a small businessman faced with these increased costs? What would you cut?

Ms. LICHTMAN. I have a couple of answers for you. The first, we are not comparing no cost and increased costs. Small businesses and large businesses today without the floor of a national law, like the one Chairman Harkin is talking about, have costs like in-

creased turnover, increased training, lower morale. There are costs attendant to individual businesses by not providing the kinds of leave that families need, be it paid sick days or paid family leave. And I am happy to focus on the paid sick days' provision.

It is a sort of false dichotomy to say, "Oh, my God, there is going to be these increased costs." There are costs. There are costs to businesses, and for sure, there are costs to society.

The second, I think that addressing the requirements of contractors to that very agency you were talking about a little while ago, the Office of Contract Compliance, requiring of our contractors with the Federal Government, that they provide the kind of basic minimum floor protections for workers like my colleague here, could not be a better idea, and we will be talking to you right quick about how to move that as an important laboratory, if you will.

My third answer is that the very study done by SHRM pointed out that new mothers' access to fully paid maternity leave has declined. Since 2005, leave for new fathers, for adoptive parents, and for parents of seriously ill family members has also declined. So we are not in a static situation. Not only do we not have the floor that Chairman Harkin is talking about, we are going backward. Workers are hurting more today than they were before, by the very study you all were talking about. Not my study, SHRM's study.

I think when you look at, to tie back to Senator Harkin's question about competitiveness, certainly world competitiveness as Ann and Senator Harkin were having a discussion about, but competitiveness within this country requires that kind of minimum floor and safety so parents can do the exact kind of caregiving that Ann talks about to allow our children and our families to flourish.

For me, all your questions perform a wonderful, seamless web of an opportunity for me to tie it all together.

Senator ENZI. And you have tied it together for quite a while.

Ms. LICHTMAN. I have. I have. Age is on my side.

Senator ENZI. Which prohibits me from doing some followup questions, which I will submit in writing. I was scheduled to leave 15 minutes ago, but I could not pass up the opportunity to ask some questions, and I do appreciate the answers. There are some things that can be done, but I think some of the people have not been in small business before.

The CHAIRMAN. Thank you, Senator Enzi.

Senator Franken.

Senator FRANKEN. Well, I do also think that the Ranking Member's suggestion on applying this to Federal contractors is a very good idea, interesting idea. I will say, I know this about the Ranking Member, he is a voracious reader and I suspect that he may have read your paper, Ms. O'Leary, and gotten the idea from there. I just suspect that.

And I also know that he knows Yellowstone very well because Wyoming shares that with Montana and it is beautiful, beautiful. But he says he does not know about the Statue of Liberty. It was given to us by the French.

[Laughter.]

Senator ENZI. And the arm was put on upside down the first time.

Senator FRANKEN. Was it? And the torch was like down? OK. Well, I think I am wasting my time now and I am the one to blame.

I would like to ask about the Older Americans Act. I think we ought to reauthorize it. And I was wondering if anybody has any thoughts about, for example, a National Family Care Giver Support program, and what role that plays for supporting mothers and families? We have the situation where we are just going to have a lot of seniors.

And the Older Americans Act, for those who are not familiar with it, was first authorized in 1965 as a way of allowing seniors to stay in their homes and not go to nursing homes. And it provides all kinds of great stuff and one of them is respite care, which is if you are taking care of an older parent, say, or a husband who maybe has Alzheimer's or something like that, there are these great volunteers who come in and provide that kind of care.

Can you speak to the reauthorization of the Older Americans Act? I see Ms. Lichtman has her hand up and eagerly wanting to answer, and then anybody else, obviously.

Ms. LICHTMAN. I think Ann as well wanted to respond.

I think it is very important. It is a vivid example of what the Government can do to help individual families, frankly, make it through every day. And the plethora of programs you outlined are very important in sustaining our families.

The growth as we age as a population healthy and very often in place of the "sandwiched generation," of people who are helping both their children and their parents, and sometimes their grandchildren, and their parents cries out for just the extension of programs like the Older Americans Act. I cannot speak more strongly in favor of those programs and the real difference that it makes in people's lives. It is a wonderful example of Government working at its very best, I think.

Senator FRANKEN. Ms. O'Leary.

Ms. O'LEARY. I was just going to add on to Judy's statement that one of the things that you mentioned, Alzheimer's, is something that our country is really facing in great degree; which is that because people are living longer, Alzheimer's is the disease that largely impacts people who are 65 and older. We are expecting to see a tremendous increase in individuals who are living with Alzheimer's. And, as a result, these policies that the Government has put in place are so critical to keep people in their homes and to ensure that we have families who are able to care for their ailing and elder relatives.

It is frankly based on the idea that there is somebody at home and that we actually have workplace policies that allow people to be away. We need to have both. We need to make sure that people can stay in their home, but that there is a family member there to help, and that they get the respite they need.

I just want to applaud you for working to reauthorize that. I think it is incredibly critical, but it also makes—we need to make sure that, for example, under FMLA, when I did a report on Alzheimer's and I found that 4 in 10 caregivers of individuals with Alzheimer's did not qualify for FMLA because they were taking

care of somebody who did not meet the definition of somebody in the family they could take care of.

For example, they were taking care of their mother-in-law or their father-in-law. They were taking care of their aunt or uncle, and none of those people are people who can actually qualify for FMLA leave, and that is a problem.

Senator FRANKEN. Ms. Ortiz, thank you for coming to speak today. I do think we are talking about two different worlds. I think INTUITIVE.

Ms. PHILLIPS. INTUITIVE.

Senator FRANKEN. Yes, it sounds like a great company and again, the second best. Again, every other company is worse except for one.

You know, hearing about the struggle that you face with a newborn paints a pretty stark picture of what, I think, a lot of women working for those other companies are facing.

We know that childcare is not cheap. My home State of Minnesota, infant care costs as much as \$15,000 per year and a toddler can cost well over \$12,000 a year. As you mentioned in your testimony, when you cannot find care for your child, you have to call out of work, and that does not sit kindly with your employer, obviously.

Can you tell us a little more about what it was like trying to find childcare for your two kids and how not having childcare affected your job?

Ms. ORTIZ. It was especially difficult because my kids are special needs, so it is not like I can just go to any daycare and enroll them in there. They do need to have speech therapists, APA therapists, occupational therapists, so it made it that much harder to find childcare.

And, to be honest, like I am grateful that my mom is able to help me out with childcare, but if she is not available, my resources are very limited because of their special needs. So it is just extremely hard, emotionally, financially, I mean, it was tough.

Senator FRANKEN. It is interesting, because when we talk, I know that there is kind of this push-pull. Senator Enzi was talking about the cost of business.

Ms. Lichtman, I thought your answer about the costs that we already have was really important and you talked about the cost of businesses. But look at the cost to Ms. Ortiz, I mean, look at that cost. That is hard to measure. Well, you probably can measure it in terms of lost work, lost income, but think of the cost, the human cost, and think of the costs of going into work. I am sorry to take so much time.

Think of the cost to the children too that, "OK, I have got to go in; I have just got to go in, so I am going to leave my kid who is sick at home. He can handle it. He is sick, but he is 6 or he is 8. He has got an ear infection." What does that do to the health of our kids? What does that do for healthcare? What does that do for our educational system? Think about the other costs. That is what we have to weigh and what we have seen from Ms. Ortiz is a real cost. I mean, that is a cost. We know that is a cost.

So we are paying for not having this right now.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

I just want to say that our staff, our committee staff and Senator Enzi's staff are now engaged in talks on reauthorization of the Older Americans Act.

Senator FRANKEN. Great.

The CHAIRMAN. Any thoughts that you might have, or your staff, please weigh in on it.

Senator FRANKEN. Absolutely. Thank you.

The CHAIRMAN. Thanks. So we are proceeding on that.

Again, I want to thank all of our witnesses for being here. Ms. Ortiz, I might say that you may have sparked a possible bipartisan piece of legislation. So this may actually move ahead.

I thank you all for your enlightening testimony. On the one hand, I think companies like INTUITIVE, we need to hold up as an example for other companies to follow. We need to do more to encourage that and to exemplify companies like that.

At the same time, I would say—it is obvious I would, since I introduced the legislation—that we need a Federal floor. And the Healthy Families Act only says 7 days, 7 days, of paid sick leave a year. I mean, that is hardly nothing, which women could use if their job does not even provide for paid maternity leave. Now, at least they could use that for that. That is only 7 days, for crying out loud. It is just the barest of minimums. I think it would, at least, begin to move us in the right direction. So both, holding good companies up, but put some kind of a national floor there below which we will not go.

I thank you all very much for your leadership, all of you, and for being here today. Mother's Day is this weekend. I am going to throw out a thought that has kind of beguiled me for some time now. We have a Mother's Day now and then we have a Father's Day in June, right. Why do we not have a Mother's and Father's Day? It just seems to me that we are kind of all in this together.

But I will say that the reason we wanted to have this hearing today was to highlight the fact that most of the people in this country who are stressed out, who find this big tug between work and family, work and kids, work and elderly are women; the vast majority are women. They work in the kind of jobs Ms. Ortiz is talking about, and many times they are the caregiver of the children.

We would like fathers to be more involved than they are, but let us be truthful about it. In most cases, it is the women, it is the mother who is the basic caregiver, and it is the mother who is working, and trying to provide for her children and her family.

I think it is important with Mother's Day coming up to recognize that the women and the mothers in this country need better support. They need a better deal in terms of their work life and their family life. And that is what I think we need to do: to provide at least a basic minimum of paid sick leave every year. It covers everyone, but I do know from the data and the statistics that the largest beneficiaries of this would be the women of this country and the mothers of this country.

That is why we wanted to have this before Mother's Day, to let the public know that if we really love our mothers, it is not enough just to give flowers and a card. I think we have to do more than that.

The record will remain open for 10 days.

The CHAIRMAN. The committee will stand adjourned. Thank you.

[Additional material follows.]

## ADDITIONAL MATERIAL

RESPONSE TO QUESTIONS OF SENATOR HARKIN BY ANN O'LEARY, J.D.

*Question 1.* During the hearing, you mentioned your previous work on improving work-life policies for Federal contractors. Please describe this work and your recommendations.

*Answer 1.* In July 2009, the Center for American Progress released a report that I authored entitled, "Making Government Work for Families: The Federal Government's Role as Employer and Contractor in Improving Family Friendly Policies."<sup>1</sup> The following is an excerpt from the report in which I lay out the argument for why the Federal Government should encourage Federal contractors to offer family-friendly workplace policies for their workers and how the Government can and should do so:

Historically, the Federal Government has provided a standard for employment benefits and equity in employment, and government contracting has often been used as a powerful tool to improve employment benefits and equity in the private sector.<sup>2</sup> Specifically, Presidential Executive Order 11246—signed by President Lyndon B. Johnson in 1965, which built on similar presidential orders going back to 1941—prohibits discrimination and insists on affirmative action to assure representation of women and underrepresented minorities in the Federal contracting workforce. And decades-old laws such as the Davis-Bacon Act, Walsh-Healy Public Contracts Act, and the McNamara-O'Hara Service Contracts Act all require that Federal contractors pay prevailing wages and benefits.

The reach of these laws is dramatic. The prohibition against discrimination applies to all employers that receive Federal contract dollars. It reaches nearly a quarter of the entire private-sector workforce in the United States.<sup>3</sup> The requirement for prevailing wages and benefits applies only to those workers directly supported by the Federal Government, but the numbers are still quite dramatic and have an outsized influence on purely private-sector wages and benefits.

Unfortunately, these laws do not adequately address the needs of today's workers, who are older than ever before, often needs to take time off to care for themselves or an elderly spouse or partner, and desire greater flexibility to enjoy life as they get older. Today's workers also face greater family responsibilities than ever before. Most workers are in families where both adults work or in single-headed households. Problem is, most jobs today don't include flexible, family-friendly policies to match the needs of today's workers.

This report documents how existing laws that protect against inequitable pay and set prevailing wages and benefits in the Federal contractor workforce have failed to fully assist workers contracted by the Federal Government in meeting the dual demands of work and family responsibilities. The report then recommends how to more fully enforce existing laws, and encourages the Government to consider new ways of rewarding contractors offering family-friendly benefits at least as good as those offered by the Federal Government to its own workers.

How important is this to American workers? It's huge. Scholars, the media, and watchdog groups have focused attention on the problems associated with the dramatic rise in contracting, including the lack of public accountability and transparency and the question of whether certain services are inherently governmental and therefore must be performed by government employees.<sup>4</sup> But less attention has been paid to the inefficiencies and inequities associated with the lack of enforcement and gaps in the laws requiring equitable pay and a standard level of benefits for Federal contract employees.<sup>5</sup>

What's more, there has been limited examination of whether Federal contractors should be required or incentivized to provide work-family benefits.<sup>6</sup> Should the single mom who works in a cafeteria for a major Federal agency be able to take a day off from work without losing pay or risking her job when her child is sick or when she needs to accompany her mother to the doctor? What about the older man who still comes in at night to clean Federal offices because he can't afford to retire—should he get more flexibility to work part-time or adjust his work schedule? How about the married parent of a newborn who is working a desk job processing reimbursement forms for the Federal Government, shouldn't that parent get the protection of paid family leave just after the baby is born?

President Obama has committed to undertake a comprehensive review of Federal contracting as well as to explore ways the Federal Government can better address challenges faced by women.<sup>7</sup> These efforts should be linked. They should include a

review of how the Federal Government can increase its enforcement and oversight of Federal contractors with regard to workplace policies supporting caregivers, a disproportionate number of whom are women.

#### RECOMMENDATIONS

The Obama administration should take a number of immediate steps to ensure the inclusion of flexible, family-friendly benefits under existing laws requiring equitable pay and a standard level of benefits in the Federal contractor workforce. The Administration should also ensure that the Federal requirement to do business with “responsible” contractors includes rewarding contractors for offering flexible, family-friendly benefits at least as good as those offered to Federal employees.

Finally, the Administration can prepare for the future by investing in research on flexible, family-friendly benefits currently offered by Federal contractors and by designing a standard benefit requirement for all Federal contract employees that meets the needs of the new workforce. Specifically, this can all be accomplished by enforcing existing Federal contractor equity and benefits laws, doing more with existing executive authority, and preparing for the Federal contract workforce of the future.

#### *Enforce Existing Federal Contractor Equity and Benefit Laws*

**Enforce Executive Order 11246 to prevent pregnancy and caregiver Discrimination.** Executive Order 11246 prohibits sex and race discrimination in the Federal contractor workforce, but it has not been rigorously enforced to protect Federal contract employees from sex discrimination on the basis of pregnancy or caregiving responsibilities. The U.S. Department of Labor should update its Executive Order 11246 compliance manual and train its enforcement officers to ensure that pregnant workers are provided with a reasonable period of leave to recover from childbirth and are reinstated upon return to work. And the Department should help employers and enforcement officers understand how to prevent sex discrimination related to gender stereotyping about caregiving responsibilities by publishing guidance modeled on the Equal Employment Opportunity Commission’s guidance on the unlawful treatment of workers with caregiving responsibilities.

**Educate the Federal contractor workforce about their duties under the Family and Medical Leave Act.** The Secretary of Labor should do more to ensure that Federal contract employers and employees know their FMLA responsibilities and rights when successor employers win Federal contracts. This can be accomplished by providing guidance to Federal contract employers and by including information about rights to FMLA eligibility and leave on the FMLA workplace poster.

**Include family-friendly workplace benefits in existing Federal contractor prevailing wage and benefit laws.** Federal contractors, covered by the Service Contract Act, are required to provide prevailing fringe benefits to their service employees performing work under the contract. This Act covers approximately one-quarter of all Federal contract workers.<sup>8</sup> Required benefits include vacation and holiday pay, health benefits, retirement benefits, disability benefits, and sick pay. But the Service Contract Act has not been interpreted to include family leave. Yet unpaid, job-protected family and medical leave is prevalent in the United States, even in small businesses, which are not covered by the Family and Medical Leave Act. Indeed, more than one-third of all small businesses provide family- and medical-leave benefits at least as good as those required under FMLA. Enforcement of the Service Contract Act should ensure access to such leave.

Moreover, under current policies, the calculation of prevailing benefits only examines benefits prevailing in the private sector; it does not include benefits prevailing in the Federal workforce, even though many Federal contract employees work side-by-side with Federal employees. And the calculation of prevailing benefits provided by Federal contractors working under a collective bargaining agreement may not capture the range of robust family-friendly policies offered under such agreements. The Secretary of Labor should update the fringe-benefit regulations covering the Service Contract Act to ensure that family-friendly benefits are included to the greatest extent possible under the law.

#### DO MORE WITH EXISTING EXECUTIVE AUTHORITY

**Reward responsible Federal contractors offering work-family benefits.** Federal procurement laws require the Government to purchase goods and services only from responsible contractors. The Center for American Progress and the National Employment Law Project have urged the Government to ensure that responsible contracting includes complying with existing labor laws, as well as rewarding contractors that offer workplace benefits that provide workers with decent wages,

health care benefits and paid sick days. These recommendations are a critical first step, but the Government should not stop there. The development of contracting guidelines to benefit all Federal contract workers—particularly low-wage workers—should reward contractors that offer a set of work-family benefits at least as good as the Federal Government offers its own employees or better, including:

- Job-protected unpaid family leave.
- Paid sick days to be used for one's own illness or to care for a sick child or other family member.
- Workplace schedules that are predictable and offer options for flexibility.
- Child and elder care subsidies.
- Paid family leave (a benefit that is better than the Federal Government's current policy).

**Improve information available about work-family benefits offered by Federal contractors.** There is a lack of information on the availability of family-friendly policies offered by Federal contractors. The Administration should work to reinstate the Equal Opportunity Survey to help the Government know which contractors are struggling with women entering and advancing in the workforce. But research on family-friendly policies should go beyond the EO survey to examine Federal contractor family-friendly policies offered by company size and by type and number of employees within these companies. The Federal Government should also incorporate the use and availability of family-friendly benefits into its regularly conducted workforce surveys, such as the Current Population Survey, as well as conduct regular in-depth surveys of the implementation family-friendly benefit laws.

*Prepare for the Federal Contractor Workforce of the Future*

**Require all Federal contractors to provide work-family benefits at least as good as those offered to Federal employees.** In the future, when the Government is armed with greater information about the availability of such policies, Congress and the Administration should consider requiring all Federal contractors to offer family-friendly benefits at least as good as those offered by the Federal Government to its own employees. As an interim step, the Government should follow the recent recommendation made by Workplace Flexibility 2010 to adopt a pilot project requiring Federal contractors that have hourly workers working on Federal contracts to provide at least two types of flexible, family-friendly work arrangements.<sup>9</sup>

These sets of recommendations make good economic sense for families, for businesses and for our Nation's economic recovery. Women make up nearly half the private-sector workforce and contribute significantly to their family incomes. A job loss resulting in a loss of nearly half of the household income is devastating to family economic security and to the country's economic recovery. The same can be said for older workers, who are staying in the workforce longer but have a growing need for flexible, family-friendly policies in order to maintain their foothold and continue to support their families.

Poor treatment of workers with family responsibilities will produce an unstable and inefficient workforce. But when Federal contractors train and retain the best employees, they help drive the economy forward and provide good returns on taxpayer dollars.

The recommendations in the "Making Government Work for Families" report focused largely on steps the incoming Administration could take to improve family-friendly workplace policies, but there is much Congress could do to encourage Federal contractors to offer more pro-family workplace policies. For example, Congress could introduce legislation that requires or incentivizes Federal contractors to provide paid sick days and other family-friendly policies. Congress could also encourage the Administration to issue an Executive order that requires the Federal Government to offer additional points during the bidding process to prospective Federal contractors that offered a minimum floor of paid sick days and other family-friendly policies. And, of course, Congress can use its oversight authority to ensure that the U.S. Department of Labor is using its authority to fully enforce EO 11246 with regard to pregnancy and caregiving discrimination.

*Question 2.* During her testimony, we learned from Ms. Ortiz about her poor wages and benefits in her previous employment. However, Ms. Ortiz was employed by a company that provides services at the Statue of Liberty under contract with the Federal Government. Why did Ms. Ortiz not benefit from the protections of the Service Contract Act, which is intended to ensure prevailing wages and benefits to employees of service contractors?

Answer 2. Ms. Kimberly Ortiz was employed by a Federal contractor providing concessionary services to visitors at the Statue of Liberty. Concession contracts entered into by the National Park Service are exempted under the Service Contract Act. However, even if Ms. Ortiz had been employed by a Federal contractor not exempted under the Service Contract Act, the benefits provided by the Service Contract Act do not fully account for the family-friendly benefits needed by today's workforce.

There are two essential weaknesses in the Service Contract Act: (1) Unpaid, job-protected family leave is not considered to be a prevailing benefit; (2) Even though paid sick days and other paid leave is included in the prevailing fringe benefit determination amount, Federal contractors are only required to offer fringe benefits up to a prevailing dollar amount and not required to offer specific fringe benefits, such as paid sick days. Therefore, employees of Federal service contractors are not guaranteed any minimum floor of paid sick days under the Service Contract Act. In reality, as long as contractors are offering fringe benefits in the amount that is prevailing they can pick and choose which of these benefits to offer.

For more information and background on the weaknesses of the Service Contract Act, I've included an additional excerpt from the "Making Government Work for Families" report:

THE ROLE OF THE FEDERAL GOVERNMENT IN ENSURING PREVAILING BENEFITS  
FOR EMPLOYEES OF FEDERAL CONTRACTORS

In addition to the antidiscrimination principles set forth in EO 11246 and the FMLA requirements by which certain private sector employers must comply, the Federal Government has long set a standard for pay and benefits in the Federal contracting workforce. In response to concerns that Federal funds spent during the Great Depression were not adequately refueling the economy because of low wages offered to construction workers, Congress passed the Davis-Bacon Act of 1931 requiring that the local prevailing wage be paid to construction workers supported by Federal contracts.<sup>10</sup> The Walsh-Healy Public Contracts Act of 1936 extended the concept of prevailing wages to public contracts.<sup>11</sup>

In 1964, the Davis-Bacon Act was amended to require the payment of not only prevailing wages, but also fringe benefits. And in 1965 the McNamara-O'Hara Service Contract Act (SCA) was enacted to require Federal contractors primarily performing services for the Federal Government through service employees to pay prevailing wages and fringe benefits.

Because of the dramatic increase in service contracts, a sector dominated by women, the guarantee of prevailing fringe benefits under the SCA deserves close attention. The SCA applies to every Federal contract in excess of \$2,500 in which the principal purpose of the contract is to furnish services to the United States through the use of service employees.<sup>12</sup> SCA covers approximately one-quarter of all Federal contract workers.<sup>13</sup>

The requirement to provide prevailing fringe benefits adopted under Davis-Bacon and then mirrored in the SCA was based on the male-breadwinner model of workplace benefits and, as such, does not explicitly provide for the inclusion of family leave or maternity-leave benefits in the calculation of prevailing fringe benefits. Instead, both laws require the calculation of prevailing fringe benefits based on:

- Medical or hospital care.
- Pensions on retirement or death.
- Compensation for injuries resulting from occupational activity.
- Insurance to provide any of the foregoing—unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs.
- Other bona fide fringe benefits not otherwise required by Federal, State, or local law.<sup>14</sup>

The determination of prevailing fringe benefits depends on whether the contractor is a successor to a contract previously covered by a collective bargaining agreement. If the contracting company is not a successor contractor, then it must pay or provide fringe benefits equal to a standard benefit level set by the Secretary of Labor.

Because data regarding prevailing fringe benefits is not available separately for classes of employees and localities, the Secretary of Labor issues a prevailing benefit determination on a nationwide level.<sup>15</sup> This standard fringe-benefit determination is based on the sum of the benefits contained in the U.S. Bureau of Labor Statistics' National Compensation Survey.<sup>16</sup> The benefits included in this determination are:

- Life insurance.
- Health insurance.
- Disability insurance.

- Sick leave.
- Personal leave.
- Retirement benefits.<sup>17</sup>

Vacation and holiday pay are not included in the nationwide determination, but are required to be provided by prevailing benefits in the locality.<sup>18</sup> If the contracting company is a successor contractor, then it must provide fringe benefits at a rate at least equal to the fringe benefits offered under the collective bargaining agreement.<sup>19</sup>

#### AVAILABILITY AND USE OF THE SERVICE CONTRACT ACT TO ENSURE PROVISION OF PREVAILING FAMILY-LEAVE BENEFITS

While the fringe benefits listed in SCA are traditional benefits developed with the male breadwinner in mind, the statute is flexible enough to allow for the inclusion of prevailing paid-leave benefits in the calculation of the standard nationwide fringe benefit level. Currently, the paid leave captured in the standard nationwide fringe benefit determination includes paid sick leave and personal leave, and as mentioned above, vacation and holiday leave are also required based on locality.

Prior to June 2008, the nationwide fringe-benefit determination also included paid family leave, but the Department of Labor stopped collecting information on the costs of paid family leave because the average cost per hour worked was too low to justify the collection burden on the respondents. In other words, paid family leave is not prevalent enough nationally to add much to the standard benefit.<sup>20</sup> If paid leave were to become more prevalent in the private sector, then it could be captured by the current standard benefit, as could other paid family-friendly benefits, such as child or elder care subsidies.

But there is an overarching weakness in the calculation of this national prevailing-fringe benefit determination: it captures the prevailing fringe benefits only in the private sector. In many instances, Federal contractors work side-by-side with Federal employees who have much more robust family-friendly benefits. Because the prevailing benefit calculation only includes the private sector, Federal contract employees working in Federal agencies alongside Federal employees do not truly receive the benefit level that prevails in their workplace.

In 1996, the last time SCA fringe-benefit regulations were amended, a number of labor unions recommended that the SCA standard fringe-benefit calculation capture the prevailing fringe benefits offered to Federal employees.<sup>21</sup> The Labor Department rejected the inclusion of Federal employee fringe benefit data, concluding that it did not have cost data of Federal employee benefits comparable to the private industry data.<sup>22</sup> The Labor Department's rejection stated that including such benefits would likely have little impact, noting that Federal health insurance would only add a few cents more per hour.<sup>23</sup>

This exclusion of Federal employees from the fringe-benefits calculation should be revisited. The Labor Department did not take into consideration the trajectory of the ever-widening gap between benefits provided to Federal employees versus those offered to private sector employees. For instance, employer-provided health benefits, historically a mainstay in the benefits package offered in the private sector, dropped by more than 5 percent from 2000 to 2007.<sup>24</sup> The Labor Department also did not consider the role the Federal Government plays in modeling fringe benefits needed by today's workers.

The Federal Government has always been at the forefront of offering family-friendly benefits, where the private sector still lags behind. Capturing these Federal employee benefits in a prevailing-benefit calculation could help Federal contractors understand why it's important to offer the same fringe benefits to their employees who work alongside Federal employees. Indeed, it would help Federal contractors maintain greater job stability and economic security as a result.

The enforcement of the prevailing fringe-benefit provision under the SCA also falls short in ensuring that Federal contractors are providing the one family-friendly benefit that does prevail in our country: unpaid, job-protected family and medical leave. Nationally, 83 percent of all private-sector workers have access to unpaid family leave.<sup>25</sup> Even at companies with fewer than 50 employees, which are not covered by the FMLA, 71 percent of these companies provide their workers access to unpaid, job-protected family leave.<sup>26</sup>

In fact, more than one-third of all small businesses offer family- and medical-leave benefits at least as good as those required by the FMLA, and approximately two-thirds of non-covered establishments provide leave for mothers' maternity-related reasons and for an employee's own serious health condition.<sup>27</sup> Fringe benefits required under the SCA do not include benefits otherwise required by Federal, State, or local law to be provided by the contractor.<sup>28</sup> This means that those compa-

nies that must comply with the FMLA cannot count such compliance toward the provision of prevailing fringe benefits.

For the Federal service contractors that are not covered by FMLA—companies with fewer than 50 employees—there should be a way of capturing the prevailing benefit of unpaid, job-protected family leave and ensuring that Federal contract workers have access to it. The Labor Department could do so by treating unpaid family leave in the same way that it treats vacation and holiday pay. When making wage and benefit determinations, the Secretary of Labor singles out vacation and holiday pay and determines the amount of such paid leave that is prevailing in the locality.<sup>29</sup>

The rationale for doing so is that many Federal contracts are performed at Federal facilities using the same employees employed by prior contractors. The SCA regulations state:

If prospective contractors were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.<sup>30</sup>

The same theory holds true for holiday pay and should hold true with regard to the prevailing benefit of unpaid, job-protected family leave. The Secretary could calculate prevailing unpaid, job-protected family leave, and require that all Federal service contractors provide it, in the same way that a minimum number of days are now provided for vacations and holidays.

#### REFERENCES

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2. James E. Jones, "The Genesis and Present Status of Affirmative Action in Employment: Economic, Legal and Political Realities," *Iowa Law Review* 70 (1985): 901, 905–07.
3. U.S. Department of Labor, Facts on Executive Order 11246, Revised January 4, 2002, available at: <http://www.dol.gov/esa/ofccp/regs/compliance/aa.htm> (last accessed June 2009).
4. Jody Freeman and Martha Minow, eds., *Government by Contract: Outsourcing and American Democracy* (Cambridge: Harvard University Press, 2009). See, e.g., U.S. Public Interest Research Group, "Forgiving Fraud and Failure: Profiles in Federal Contracting" (2007) available at <http://www.uspirg.org/home/reports/report-archives/campaign-finance-reform/campaign-finance-reform/forgiving-fraud-and-failure-profiles-in-federal-contracting> (last accessed June 2009); Scott Shane and Ron Nixon, "In Washington, Contractors Take On Biggest Role Ever," *The New York Times*, February 4, 2007, p. A1.
5. Paul K. Sonn and Tsedeye Gebreselassie, "The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services" (New York: National Employment Law Project, forthcoming). See generally Madland and Paarlberg, "Making Contracting Work for the United States," Kathryn Edwards and Kai Filion, "Outsourcing Poverty: Federal Contracting Pushes Down Wages and Benefits" (Washington: Economic Policy Institute, 2009).
6. National Women's Law Center, "Platform for Progress: Building a Better Future for Women and Their Families" (2008), p. 8 (recommending that the President issue an Executive order requiring Federal contractors to offer paid sick leave); Heidi Hartmann, Ariane Hegewisch, and Vicky Lovell, "An Economy that Puts People First: Expanding the Social Contract to Include Family Care" (Washington: Economic Policy Institute, 2007), p. 8 (recommending an Executive order requiring Federal contractors to provide family-friendly accommodations and to report annually on the usage of these accommodations by different types of workers at various levels of responsibility).
7. The White House, "President Obama Announces White House Council on Women and Girls," March 11, 2009; Executive Order 13506, Establishing A White House Council on Women and Girls, March 11, 2009; The White House, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting," March 4, 2009.
8. Chauna Brocht, "The Forgotten Workforce: More than One in 10 Federal Contract Workers Earn Less Than a Living Wage" (Washington: Economic Policy Institute, 2000), p. 9 (Table 8).
9. Workplace Flexibility 2010, "Public Policy Platform on Flexible Work Arrangements" (Washington: Georgetown Law, 2009).

10. William G. Whittaker, "Davis-Bacon Suspension and Its Legislative Aftermath" (Washington: Congressional Research Service, 2005).
11. The Walsh-Healy Public Contracts Act does not require prevailing fringe benefits and while it was intended to provide prevailing wages, the wage determination under this Act has been tied to the minimum wage, leaving workers without real prevailing wage coverage. See Sonn and Gebreselassie, "Road to Responsible Contracting," fn 34 (citing *Wirtz v. Baldor Electric Co.*, 337 F.2d 518 (D.C. Cir. 1963)).
12. 41 U.S.C. § 351.
13. Brocht, "The Forgotten Workforce" at p. 9 (Table 8).
14. Service Contract Act, 41 U.S.C. § 351(a)(2); Davis-Bacon Act, 40 U.S.C. 267(a).
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17. U.S. Bureau of Labor Statistics, "Employer Cost for Employee Compensation Survey" (Washington, June 2009) available at: <http://www.bls.gov/news.release/ecec.nr0.htm>.
18. 29 CFR § 4.52.
19. 29 CFR § 4.163(a).
20. The BLS continues to collect information on the incidence of paid family leave, but not the costs of these programs. Personal e-mail correspondence with BLS.
21. 61 FR 68649–68650 (December 30, 1996).
22. 61 FR 69655 (December 30, 1996).
23. *Ibid.* at FN8.
24. Lawrence Mishel, Jared Bernstein, and Heidi Shierholz, "The State of Working America, 2008–2009," (Washington: Economic Policy Institute, 2008), Chapter 7.
25. Bureau of Labor Statistics, *National Compensation Survey* (Department of Labor, March 2008), Table 21, "Leave Benefits: Access, Private Industry Workers."
26. *Ibid.*
27. 65.7 percent of non-covered establishments provide leave for mothers' maternity-related reasons and 66.4 percent for the employee's own serious health condition. *Ibid.* at 7–3.
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30. 29 CFR § 4.173(a).

#### RESPONSE TO QUESTION OF SENATOR HARKIN BY KIM ORTIZ

*Question.* In your testimony you discussed some of the problems you had with your schedule, including the number of hours assigned and the timing of when you were notified of your assigned shifts. What would you ask of government, in establishing public policies, or of employers to improve scheduling practices?

*Answer.* It is time for government policy to regulate abusive scheduling practices that negatively affect service workers like me. I have seen the declining quality in retail jobs firsthand. Far too many retail workers like myself are struggling to get by on low-wages and unpredictable schedules—it is nearly impossible to find full-time work in this rapidly growing industry. My employers' just-in-time scheduling practices determine how much pay I take home at the end of the week, whether or not I am eligible for benefits, and my upward mobility in the company. Part-time workers should be paid the same wages as full-time workers and offered proportionate benefits and paid time off. Without part-time worker protections we're only going to see more companies hire part-time workers instead of full-time workers.

Working with an unpredictable scheduling made it extremely challenging for me as a mother to balance my work responsibilities with my childcare needs. More and more national retailers are giving workers last-minute notice of their shifts and granting "on call" shifts instead of stable hours. An "on call" shift is a workday when employees are not guaranteed work but must call their manager, typically 2 hours before their shift starts, to see if their employer needs them. This too common last minute scheduling practice is fueling underemployment in the retail industry. My friends and neighbors cannot take on second jobs to supplement their income because they have to be available to work even on the days when they aren't called in to the store. While some States require minimum "shift pay" or "call-in pay," even if an employee doesn't work the entire shift, we need a Federal standard to halt the growing problem of underemployment. We need policies that promote advanced notice in schedules—most retail companies can predict the amount of workers they'll need a month ahead of time—yet workers are increasingly getting shorter notice.

I would ask that government policy create structures to make it possible for moms in hourly jobs to fully participate in the workplace. The retail industry has long been where many women and caregivers find employment. The Retail Action Project study I referenced at the hearing found that women working in retail jobs are less

likely to be offered a promotion or basic health benefits. We also found a significant wage gap which puts women, particularly women of color, at a permanent disadvantage. This opportunity gap can't be explained by a personal lack of ambition or professional ability. If my job at the Statue of Liberty provided sick leave and paid family leave, I would never have had to make the tough choice between my job and my kids. The Federal Government has already worked to outlaw mistreatment on the basis of gender or race in the workplace, we need additional protections so that caregivers aren't sidelined or given fewer opportunities for advancement. I urge the Government to take action to implement national paid sick days and family leave legislation.

The Rebuild America Act in the U.S. Senate would push more retail hourly jobs in the direction of sustainability and make those into family-sustaining jobs. Sustainable scheduling policies would also help make work more rewarding for working parents. Beyond advanced notice of schedules, the Federal Government can make "reporting pay" a part of the Federal Labor Standards Act (FLSA)—it already exists in several States. Requiring employers to pay a minimum of 4 hours when a worker reports to a scheduled shift would ensure a stable weekly paycheck even if workers are "sent home early." Reducing the number of annual worked hours to qualify for FMLA and ERISA would extend these essential protections to the growing part-time workforce.

#### RESPONSE TO QUESTIONS OF SENATOR HARKIN BY JUANITA PHILLIPS

*Question 1.* In your testimony, you discussed the concept of "safe harbor," the Society for Human Resource Management's (SHRM's) proposal for leave policy in the United States. Please explain safe harbor in more detail. What rights to leave would this confer on workers, in terms of amount of time, allowable reasons to use leave, protections against discipline or retaliation, and access to paid leave? How would these rights compare to or interact with current and future Federal, State, and local leave policies? Would a safe harbor policy result in additional workers, including low-wage and hourly workers, attaining access to paid leave allowable in a variety of circumstances?

Answer 1. SHRM believes the United States must have a 21st century workplace flexibility policy that meets the needs of *both* employees and employers. The policy should enable employees to balance their work and personal needs while providing predictability and stability to employers.

Rather than a one-size-fits-all policy, SHRM supports a comprehensive workplace flexibility policy that responds to the diverse needs of employees and employers and reflects the wide range of work environments, union representation, industries, and organizational size.

Under the proposal, SHRM believes that all employers should be encouraged to provide paid leave for illness, vacation and personal days for employees to use for any purpose, consistent with the employer's policies or collective bargaining agreements. In return for meeting a minimum eligibility requirement, employers who choose to provide paid leave would be considered to have satisfied Federal, State and local leave requirements and would qualify for a statutorily defined "safe harbor." This approach would:

- Provide certainty, predictability and accountability for employees and employers.
- Encourage employers to offer paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing—and often conflicting—existing patchwork of regulations.
- Create administrative and compliance incentives for employers who offer paid leave by offering them a safe-harbor standard that would facilitate compliance and save on administrative costs.
- Allow for differing paid leave requirements that would reflect different work environments, union representation, industries and organizational size.
- Permit employers that voluntarily meet safe harbor leave standards to satisfy Federal, State and local leave requirements.

The safe harbor leave would operate much like a Paid Time Off (PTO) plan, with an employer providing a guaranteed standard block of flexible paid leave to the employee that can be used for any leave purpose as determined by the employee. Under this proposal, leave would be subject to the notice requirements and parameters of the employer's policy including requirements for employees to use their annual leave. Employers would be required to create a plan document, made available to all eligible employees, that fulfills the requirements of the safe harbor.

In addition, employers would be required to attest to the U.S. Department of Labor that the plan meets the safe harbor requirements.

In return for meeting the eligibility requirements, employers who choose to provide paid leave would be considered to have satisfied Federal, State and local leave requirements and would qualify for a statutorily defined “safe harbor.”

SHRM believes the Federal Government should encourage paid leave—without creating new mandates on employers and employees. From our perspective, a government-mandated approach to providing leave is a clear example of what won’t work. A program that provides incentives to employers voluntarily to provide paid leave will create innovative and more flexible ways for employers to meet the needs of their employees. We believe the safe harbor approach will encourage employers to offer more paid leave under a uniform and coordinated set of rules that would replace and simplify the confusing—and often conflicting—existing patchwork of Federal, State and local laws.

*Question 2.* Does the concept of safe harbor envision oversight by a government agency to ensure workers’ rights to leave are upheld and to investigate complaints? How would disputes between employers and employees be resolved? What recourse or remedies would be available to employees if they believe their rights to leave have been violated?

*Answer 2.* As noted above, under the SHRM safe harbor concept employers would be required to create a plan document, made available to all eligible employees, that fulfills the requirements of the safe harbor. In addition, employers would be required to attest to the U.S. Department of Labor that the plan meets the safe harbor requirements and those attestations would be subject to audit by the Department of Labor.

In addition to providing paid leave, an employer that wanted to be afforded the benefits of the safe harbor would also be required to offer certain flexible work arrangements.

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NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES,  
WASHINGTON, DC 20009,  
June 5, 2012.

Hon. TOM HARKIN, *Chairman,*  
*U.S. Senate,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Dirksen Senate Office Building,*  
*Washington, DC 20510.*

DEAR CHAIRMAN HARKIN: On behalf of the National Partnership for Women & Families, I thank you for inviting me to testify at the Senate Health, Education, Labor, and Pensions Committee hearing, “Beyond Mother’s Day: Helping the Middle Class Balance Work and Family,” on May 10, 2012. At your request, I am providing the National Partnership’s view on the “safe harbor” proposed by the Society for Human Resource Management (SHRM), as discussed by Ms. Juanita Phillips in her hearing testimony.

The National Partnership shares SHRM’s belief that employers invest wisely in their workers when they provide paid time off so that workers can care for themselves and their family members when illness strikes or medical needs arise. Research shows that paid sick days policies promote retention and loyalty, reduce turnover, save costs, and contribute to workers’ well-being. We applaud employers who make paid leave policies available to their employees and encourage more employers to do so.

Unfortunately, not all employers understand the value of offering workers paid sick days. Nearly 40 percent of private-sector workers in the United States do not have access to even a single paid sick day.<sup>1</sup> Among the lowest-wage workers, barely 20 percent have access to paid sick days.<sup>2</sup> Even those who do have some form of paid time off for themselves too often cannot use it to care for an ill child or family member, or fear discipline on the job for using accrued time off.<sup>3</sup>

<sup>1</sup> U.S. Bureau of Labor Statistics. (2011, March). *Employee Benefits Survey Table 33. Leave benefits: Access, private industry workers, National Compensation Survey*. Retrieved 26 April 2012, from <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table21a.pdf>.

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<sup>3</sup> Smith, K. & Schaefer, A. (2012). *Working Parents’ Access to Paid Sick Days to Care for their Children*. Forthcoming publication. University of New Hampshire Carsey Institute; Miller, K., Drago, R. & Williams, C. (2011, July). *Paid Sick Days and Employer Penalties for Absence*. Institute for Women’s Policy Research publication. Retrieved 30 May 2012, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-employer-penalties-for-absence>.

Workers' inability to access paid sick days comes at a high price: Nearly one quarter of adults in the United States have lost a job or been threatened with job loss for taking time off work to recover from illness or care for an ill family member.<sup>4</sup> And for workers without paid sick days who are lucky enough to keep their jobs when illness strikes, just 3½ days off work in a month without pay jeopardizes the average worker's ability to afford their family's groceries.<sup>5</sup> Workers' lack of access to paid sick time also results in costs to our health care system and the economy, in the form of unnecessary emergency room costs,<sup>6</sup> higher rates of workplace contagion<sup>7</sup> and reduced productivity.<sup>8</sup>

These sobering statistics tell us that SHRM's "safe harbor" proposal is not enough to meet the needs of U.S. workers and their families. SHRM's proposal merely encourages employers to voluntarily adopt policies that provide workers an unspecified, minimum number of paid leave days that can be used for any reason. Employers with leave policies would be deemed to satisfy any Federal, State or local leave laws regardless of what those laws or the employers' policies say or provide. SHRM's proposed "safe harbor" is not a substitute for putting a minimum paid sick days standard in place. There is nothing in SHRM's "safe harbor" proposal that guarantees that time off may be used for personal or family illnesses or to attend medical appointments on short notice; there is nothing that guarantees that workers will not be disciplined or punished for using paid sick time; and there is nothing that provides workers a right to hold their employers accountable for violations of a voluntary policy. These are all critically important shortcomings and underscore the need for a basic minimum labor standard that provides workers the right to earn paid sick days.

U.S. workers—and particularly those in low-wage, high-turnover industries where employees have little bargaining power—need a minimum paid sick days standard. To be sure, we believe proposed laws like the Healthy Families Act (S.984/H.R.1876) can and should recognize that some employers are already providing paid time off to their workers. For this reason, the Healthy Families Act includes a paid time off equivalence provision so that employers who meet the Act's minimum requirements by providing paid time off that can be used for the same purposes and under the same conditions as specified in the Act do not have to provide additional time off. This is the only form of "safe harbor" that we can support.

As I noted in my testimony, public policies are critically important in setting our Nation's course. Minimum wage and overtime laws, laws regulating working conditions and other standards that we now take for granted helped build our middle class. In the 21st century, national standards are needed so that workers in every corner of this Nation can maintain their short-term financial stability and protect their long-term economic security when illness strikes or medical needs arise. SHRM's "safe harbor" does not fill this need.

Thank you again for the insightful dialog at the May 10 hearing. We look forward to working with you to ensure that American families are able to meet their responsibilities on the job and to their families. If you have any further questions, please do not hesitate to contact me.

Sincerely,

JUDITH L. LICHTMAN.

<sup>4</sup>Smith, T. & Kim, J. (2010, June). *Paid Sick Days: Attitudes and Experiences*. National Opinion Research Center at the University of Chicago Publication. Retrieved 26 April 2012, from <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.

<sup>5</sup>Gould, E., Filion, K., & Green, A. (2011, June 29). *The Need for Paid Sick Days: The lack of a federal policy further erodes family economic security*. Economic Policy Institute publication. Retrieved 29 May 2012, from <http://www.epi.org/page/-/BriefingPaper319.pdf?nocdn=1>.

<sup>6</sup>Miller, K., Williams, C., & Yi, Y. (2011, October 31). *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*. Institute for Women's Policy Research publication. Retrieved 29 May 2012, from <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>.

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NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES,  
WASHINGTON, DC,  
June 5, 2012.

Hon. MICHAEL ENZI, *Ranking Member*,  
U.S. Senate,  
Committee on Health, Education, Labor, and Pensions,  
428 Dirksen Senate Office Building,  
Washington, DC 20510.

DEAR RANKING MEMBER ENZI: On behalf of the National Partnership for Women & Families, I appreciated the opportunity to testify at the Senate Health, Education, Labor, and Pensions Committee hearing, "Beyond Mother's Day: Helping the Middle Class Balance Work and Family," on May 10, 2012. At your request, I am providing further information on the statistic I referenced in my testimony that the Family and Medical Leave Act (FMLA) has been used more than 100 million times by employees since 1993.

The National Partnership calculated the estimate that the FMLA has been used more than 100 million times by multiplying the number of FMLA leaves taken annually by U.S. workers (6.1 million, based on a 2007 U.S. Department of Labor estimate derived from its last employer-based survey, the most recent estimate available)<sup>1</sup> by the number of full years since 1993 (18 years), for a result of 109.8 million leaves. We use the more general statement "more than 100 million times" to reflect that (1) take-up of FMLA leave was lower in the first years after the law's enactment, (2) labor force participation has fluctuated, and (3) there is a lack of current data to provide an exact calculation.

We look forward to new survey data that the U.S. Department of Labor has commissioned on employer and employee experiences with the FMLA. This data, which we expect will be released in late 2012 or early 2013, will enable us to calculate an updated estimate of FMLA utilization.<sup>2</sup> The survey results will also provide policymakers and groups like ours with a better understanding of the updates that are needed to ensure that the FMLA works well for employers and workers.

Thank you again for the thoughtful and serious dialog at the May 10 hearing. If you have any further questions, please do not hesitate to contact me.

Sincerely,

JUDITH L. LICHTMAN.

[Whereupon, at 11:36 a.m., the hearing was adjourned.]

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<sup>1</sup> Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information. 2007 Update, 72 Fed. Reg. 35550 (2007) (codified at 29 CFR pt. 825). Retrieved 25 May 2012, from <http://www.dol.gov/whd/FMLA2007FederalRegisterNotice/073102.pdf> at 35622. DOL's estimate of 6.1 million FMLA leaves annually is based on employees' FMLA utilization as reported by employers in DOL's 2000 FMLA employer survey, multiplied by the size of the 2005 workforce.

<sup>2</sup> For more information on the new FMLA surveys that the Department of Labor has commissioned, see U.S. Department of Labor Wage and Hour Division. *FMLA Surveys*. Retrieved 29 May 2012, from <http://www.dol.gov/whd/fmla/survey/>.